

5. P. d.
Francis AN Hargrave.
ENQUIRY
into the
Ancient and Present STATE
OF THE
COUNTY PALATINE
OF
DURHAM.

WHEREIN are shewn the Oppressions which attend the Subjects of this County by the Male-administration of the present Ministers and Officers of the said County Palatine:

WITH some Reasons humbly offered to the Freeholders, Leaseholders and Copyholders of the said County to consider of Ways and Means to remedy the said Abuses, or entirely to take away the said County Palatine, and the Bishop's temporal Power and Jurisdiction therein.

WHEREBY their Fortunes and Tenures may be rendered more easy and secure.

Avaritia vero senilis, quid sibi velit, non intelligo: Potest enim quicquam esse absurdius, quam quo minus viæ restat, eo plus viatici quærere? Tull. De Senectute.

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INTRODUCTION.

THE first Part of this Work was composed by *John Spearman*, Gent. who was Under-sheriff for the County of *Durham*, by the space of twenty nine years, 'till he died, and Deputy-register of the Court of Chancery at *Durham* for forty two years, and was thoroughly acquainted with all the Records thereof; a Person of approved integrity, a lover of his country, of great skill and judgment in his profession, of unbiaſſed affection for the established Church and Government who, being ſollicited by the late Right Reverend Dr. *Nicholson*, then Archdeacon, and afterwards Bishop of *Carlisle*, to give him a ſummary account of the ancient ſtate of the ſaid County Palatine, composed (from the Records) the following Abstract, in the year 1697. in the 10th year of the reign of King *William* the third, as appears by the Manuscript in his own hand writing.

THE

INTRODUCTION:

THE second and third Part hereof, being composed in haste, the Collector not having leisure (at present) to correct or enlarge it, desires his readers to excuse any repetitions or mistakes, which may be occasioned thro' haste, designing to publish a larger and more correct account of the said County Palatine and the Antiquities thereof in due time.

ERRATA.

In the Margin page 7, 9, 12, 13, 15, 16. for *schac'* read *shed'*.
P. 105. for *having* read *have*.

A N
E N Q U I R Y
I N T O T H E
Ancient and Present S T A T E
O F T H E
County Palatine of *Durham*.

P A R T I.

Memoranda Comitatus Palatini Dunelm' & Sadberge & Jurium Regalium Domini Episcopi Dunelm' inter Tinam & Tesam ac in Maneriis & Dominiis d' Norham, Insula sacra, Bedlington & Crake parcellis Com' Palatini præd'.

THE county Palatine of *Durham* and *Sadberge* is a county Palatine by prescription time out of mind; (and not by creation, or grant within memory) and extends between the middle of the river *Tyne* on the North, and the middle of the river *Tease* on the South.

And the manors of *Norham* and *Holy-Island*, vulgarly called *Norham* and *Island-Skires*, on the sea coast and borders of the river *Tweed* (dividing them from

Vide Rottul' 5^o
clauso Turr' London
anno 21 Ed' 1. Regis.
dorfo M. 35. d' Par-
liamento.

Vide 22 Ed' 3. 4.
Tit' Jurisdic' 61.
Cambden 736. 3^d
Bulstride 157. Ryley's
placita Parliamentor'
fol' 135. 141.

Whitlock's reading
upon the Stat' 21 H.
S. c. 13. d' faculta-
tibus beneficior'.

B

Scotland)

Rottul' parliament'
 anno 2 H. 6. Regis
 anno 23.
 Coke's 4 Instit'
 c. 38. fol' 216.

Scotland) on the North, where the Bishop's seat was first established (to wit) in *Holy-Island*: and also the manor or lordship of *Bedlington*, commonly called *Bedlingtonshire*, lying on the sea coast between the rivers called *Blyth* on the South, and *Wentspeck* on the North (dividing it from the county of *Northumberland* on both sides); and also the manor of *Crake* near *York*, anciently have been and still continue parcels of the body of the said county Palatine, and resort to *Durham* for justice in all matters of law and civil jurisdiction, as members of the said county Palatine (tho' anciently *Norham*, *Island* and *Bedlington Shires* had all courts and officers of justice, within their respective limits, by the Bishop of *Durham's* commissions only, as well for justices, sheriff, escheators, coroners, and all other ministers of justice,) as the body of the county Palatine had between *Tyne* and *Tease*, until the act of parliament made anno 27 Hen' 8. Regis c. 24. which restored or resumed all royal franchises and jurisdictions into the Crown: and the Bishops of *Durham* successively, time out of mind, have always been Count Palatines of the said county Palatine and royal liberties in right of the church and see of *Durham*; and by the like time held and enjoyed all royal rights and jurisdiction, both by land and water, as well in the navigable rivers of *Tyne*, *Weare*, *Tease*, and *Blyth*, next adjoining to the said county, as in all other rivulets and waters within the limits of the said county, and along the sea coast adjoining thereon; and the said county Palatine, and the Bishop's royal franchises and jurisdiction therein, have frequently been either confirmed or allowed, and saved or excepted in many acts of parliaments, as well as by ancient royal charters and records. And

And particularly the said Bishops anciently, and time out of mind, had and enjoyed all courts of justice within the said county, and the power of appointing all the judges, and officers of the said courts, by his commissions or patents in his own name, and under his county Palatine seal; some for life, and others *quam diu se bene gesserit*, or *durante beneplacito*; and still continues most of the courts and all the offices, and the making of all the officers by his patents as before, *viz.*

1. A court of wards and liveries, and an escheator and feodary, until the act of parliament made *anno 12 Car' 2. Regis c. 24.* which took away wardships thro'

Stat' 12 Car' 2.
c. 24.

the whole kingdom.
In lieu whereof the King had excise on ale and beer granted him by that act of parliament; and in recompence of the Bishop of *Durham's* loss of his wards and liveries, his Majesty was graciously pleased to release to Dr. *John Cofins*, then Bishop of *Durham*, and his successors, a yearly rent of 880 *l.* issuing out of the Bishoprick to the Crown from the Queen Mother's death, which rent is still discontinued, and stands discharged to the present Bishop. For wardship excepts the Bishop of *Durham's* fee between *Tyne* and *Tease*.

Vide Rottul' a Cofins Episc' N° 39. dat. 29 Aug' anno 15 Car' 2. Regis 1663.

2. A court of chancery for determining all causes of equity arising between all parties inhabiting within the county Palatine, or the liberties thereof, or for matters lying or arising within the same; and a temporal chancellor judge of the said court; a register, and examiner, all appointed by the Bishop's patents.

Vide Stat' prerogativi Regis anno 17 Ed' 2. c. 1.

Vid' 17 Ed' 2. c.

3. A court of pleas; as well for determining all pleas of the Crown, as all civil rights of the inhabitants of the said county; and all actions real, personal and mixt for lands, goods, contracts, and trespasses: and all other matters within the said county; wherein all the justices were anciently appointed by the Bishop, by commission in his own name, and under his own seal; and also all indictments within the county Palatine were in the Bishop's stile, and *contra pacem Domini Episc'*, as in the King's stile without the county Palatine.

Also felonies, outlawries, and trespasses, *contra pacem*, and forfeitures of recognizances for the peace, or good behaviour within the said county Palatine, were frequently pardoned, or prosecuted by the Bishop's patent or commission in his own name, and under his seal, until that act of resumption of royal franchises *anno 27 H. 8. Reg. c. 24.*

Yet that act continues the Bishop of *Durham*, and his temporal chancellor (for the time being) justices of the peace within the said county Palatine for ever.

And also it directs all commissions, writs, and process of law there, for the future to be made in the King's name and stile, but *teste* the Bishop while the See is full; and in the temporal chancellor's name (*sede vacante*) which hath been accordingly observed and pursued ever since, and still continues.

4. Also the sheriff of the county, the under-sheriff, the county clerk, and the goaler, the clerk of the crown, the prothonotary or clerk of the civil pleas and assizes; the clerk of the peace, the curfitor or clerk of the latin chancery and inrollments, or petty-bag, and other officers

officers of like nature were all (time out of mind) and still are made by patents from the Bishop alone, and in his own name, and under his seal (*sede plenâ*) as before.

And the King's writ hath anciently been adjudged not to run within the county Palatine (that is) not mesne process, from the courts at *Westminster*, generally as in other counties.

And the return thereof with a privilege of a county Palatine, (*ubi breve Domini Regis non currit*) hath always been allowed by the courts above in such cases; and by the statute before mentioned of 17 *Ed. 2. c. 1.* for wardships, declares this privilege, and exemption in the proviso for the Bishop's fee between *Tyne* and *Tease* (*ubi breve Domini Regis non currit*); also fines and common recoveries at *Westminster* for assurance of lands within this county Palatine, have been adjudged void, as being done (*coram non judice*) annals 9 *Hen. 7. Regis fol. 12.*

Vide Stat' 17 *Ed. 2. c. 1.*

Saving the Bishop's right of being *Custos Rotulorum pacis* for the county Palatine.

Vide Stat' anno 3 & 4 *Ed' 6. c. 1.*

The like saving.

Anno Ph' & Mariz.

The like saving for writs *de excommunicato capiendo*.

Anno 5 *Eliz' c. 23.*

The like for fines of lands, and proclamations thereupon.

Anno 5 *Eliz' c. 27.*

The like for proclamations upon the exigent for outlawries.

Anno 31 *Eliz' c. 9.*

For avowries in replevins.

Car' 24

Besides many other instances of the like nature down to this time.

5. Also the Bishops of *Durham*, time out of mind, have used and enjoyed a royal jurisdiction of admiralty within the county Palatine, by their commissions and

patents appointing commissioners, a vice-admiral, a register, a marshal, a water bailiff, and other such like officers, who acted therein constantly beyond memory, both on the sea coasts, and in all the rivers throughout the whole county, and the dependencies or liberties thereof. And accordingly the said Bishops have constantly had, and enjoyed, all the privileges, forfeitures, and profits, incident thereunto, or thereby accruing due (as Count Palatine and chief Lord) within the county Palatine, as the Kings have without it, *viz.*

Wrecks of the sea, duties for ships applying to his ports, anchorage, beaconage, wharfage, moorage, butlerage, and other such like advantages.

Also they have, and still enjoy, divers ferry boats over the navigable rivers within the said county, and wharfs or keys for laying ballast upon, or merchants goods from ships, and the meelage of corn laden, and unladen there; and divers fishings and dams over the said rivers; and houses, and shops, on the South-side of Tyne bridge, whereof leases have been anciently granted, and are still renewed: all which privileges and benefits have been confirmed or allowed as well by ancient royal charters as by other records; and upon occasion of contesting any of them, they have been adjudged for the Bishop, or his lessees, or assignees.

Vide Regist' Decani & Capituli Dunelm' Anno Dom' 1080. Anno 14 Williel' Conquest'

ff. *Charta Williel' primi Dunelm' (viz.) Williel' d' Karilepho tunc (29 Episc' Dom.) d' libertatibus Eccles' Dunelm' per consensum Gregorii Papæ & Williel' Conquestoris tunc Angliæ Regis.*

Turris

Turris London ff. Record' Merchiar' whereby the meets and bounds of the river *Tyne* are described as then enjoyed; and the Bishop of *Durham* then had the South part thereof next his county Palatine. Vide Recorda tempore Williel' conquest' Regis.

ff. *Charta Henrici primi Regis Angliæ Ranulpho Flambarð Episc' Dunelm' d' consuetudinibus in aquis sancti Cuthberti d' Tyna, quas Ranulphus Episc' diraconavit adversus Northumbrenses in sua & Baronum suorum præsentia.* —— Charta
—— & Capituli
Dunelm'.

ff. *Charta Henrici secundi Regis Episc' Dunelm' d' applicatione navium ex parte sua in Tyna tam libere, honorifice, & quiete, sicut Rex habet ex altera parte.*

ff. *Charta Johannis Regis Angliæ d' libertatibus Eccles' Dunelm'.* About 1200.

ff. *Charta convention' inter Richardum (Poore) Episc' & priorem & conventum Dunelm' d' custom' & proficuis navium in aqua d' Tease spectante Episc' nec non d' omnibus placitis coronæ, & curiarum jurisdiction', Wrecis Maris, Amerciamentis, and forfeitures felon' confirmed by Thomas Hatfield, Bishop.* Rottul' (A) Tho
Hatfield Episc' schad
19. about anno 12
H. 3. Regis 1228.
Anno 28 Ed' 3.
Regis 1354. *Sc 122*

ff. Proceedings in an Eyre held by the Bishop's justices of nufances in the South part of *Tyne*. Vide Turr' Lond'

ff. The manor of *Greatham* within the county Palatine being forfeited by the attainder of *Peter d' Montforth*, and granted by the King for *Thomas Clare*; upon the Bishop's complaint, that grant was revoked, and the forfeitures

forfeitures adjudged and restored to the Bishop as his due, by reason of his *Jura Regalia* within the said county.

Rottul' (AA) Wal-
teri Skirlaw Episc' D.
Nº 2. anno 4 R. 2.
Regis 1390.

ff. The like grant from the King (*Rich. 2.*) to the Bishop of the lands of *Michael d' la Poole* forfeited for treason.

Vide Record' Tur-
ris London' M. S. ha-
beo. Anno 9 Ed' 1.
Regis 1281.

Upon a *Quo Warranto* brought, the Bishop of *Durham's* liberties were allowed *coram Johanne d' Vallibus & sociis suis justiciariis itinerantibus in Com' Northumbriae*.

Anno 21 Ed' 1.
Regis 1293.

Judicium in parlamento super reversion' inquisitionis capt' coram Hugone d' Cressingham, & aliis justiciariis itinerantibus in Com' Ebor' tangent' & concern' libertatibus Episc' Dunelm' a camera scbac' apud Westm' & certificat' in Cancellar' Angliæ anno 21 Eliz' Reginae.

Et inquisitio inde capt' apud Novum Castrum super Tinam, in Com' Northumbriae, Cro' sancti Hillarij anno Regni Ed' Regis (filij Regis Henrici) 21 d' medietate aquæ d' Tyne Episc' Dunelm' spectant'.

Vide Rottul' 5º
clauso Turris Lond'
anno 21 Ed' 1. Regis
dorfo M. 3. 5.

ff. *D' parlamento coram ipso Rege, & consilio suo tent' in manerio Arch-Episc' Ebor' apud London post pascham eodem anno d' Tyne 40bo Mercar' super Johannem (Romani 38 Archi-Episc' Ebor') tunc Archi-Episc' Ebor' imposit' pro excommunicatione Anthonij Beake Episc' Dunelm' pro incarceratione nuntior' ejusdem Archi-Episc' infra libertatem Regalem Dunelm'.*

ff. Con-

ff. *Concessio vel Charta prohibitionis Edwardi tertij Regis, ad Archi-Episc' Ebor' non visitare libertatem Dunelm'.* Rottul' (B) Tho' Hatfield Episc' schac' 12. N° 1.

ff. *Inquisitio d' medietate aquæ d' Tyne, pro Episcopo Dunelm'.* Anno 10 Ed' 2. Regis (1317) vid' M. schac' fol' 142.

ff. King Edward III. by his writ (bearing *tesle* at York) on the Bishop of *Durham's* behalf (then *Richard d' Bury*); prohibits the manor, and the bailiffs of the town of *Newcastle* upon *Tyne*, from hindering the applying of ships on the South of the river of *Tyne* belonging to the Bishop. Vide 20. Aug' anno 8 Ed' 3. Regis 1334.

ff. The King's commissioners, appointed conservators of the river *Tyne*, were prosecuted before the Bishop of *Durham's* justices (appointed by the Bishop's own commission) for intermeddling in the conservatorship of the South part of the said river belonging to the Bishop; wherein the King's commissioners pleaded not guilty, but upon tryal thereof, they were found guilty, and condemned to imprisonment. Vide Turr' Lond' anno 18 Ed' 3. Regis 1334. Rich' d' Bury tune Episc'.

And the King by his own writ of *Supersedeas* to the Bishop's *Exigent* against others of the King's commissioners (that did not appear) in order to outlawry, promised to reform their abuses for the future.

ff. The Bishop's claim and plea allowed in the King's exchequer for the customs of the wool within his royal liberty. Eodem anno.

Anno 7 R. 2. Regis
1384. Johannes For-
dam Episc' includes
ballast (inter alia).

ff. *Charta Richardi secundi Regis Episc' Dunelm' pro ap-
plicatione navium, oneratione & exoneratione carbonum,
merchandizor', & aliar' rerum quarumcunque, absque
impedimento hom' villæ Novi Castri super Tinam.*

Nov' 10. anno 15
R. 2. Regis, 1393.
Vide Dugdale's Mo-
nast' Anglican' prima
parte fol' 46. Tit'
Dunelm'.

ff. *Charta Richardi secundi Regis Episc' Dunelm', d' liber-
tatibus Regal' com' Palatini infra Tynam & Tesam, (us-
que medium Aquar' illar') cum applicatione, oneratione,
& exoneratione navium Battellorum, & alior' Nasor' in
eisdem aquis.*

Anno 8 H. 4. Re-
gis 1407.

ff. *Inspeximus & confirmat' Chartæ Richardi secundi Regis
supradict' per Hen' 4. Regem.*

Feb' 18. anno 21
Eliz' Reginae 1579.

ff. *Confirmatio Chartæ Richardi secundi Regis per Eli-
zabetham Reginam.*

Anno 2 H. 5. Re-
gis 1415.
(Vel) anno 4 H. 5.
Regis.

ff. A record of the tryal and judgment from *Thomas
Langly* then Bishop of *Durham*, against the mayor and
burgeesses of *Newcastle* upon *Tyne*; for the South part
of the river *Tyne*, and of the bridge with the tower
thereupon; upon a solemn tryal at the King's bench
bar (by a jury of the counties of *Westmoreland* and
Cumberland) of an issue joined before my Lord Chan-
cellor, and transmitted to the King's bench, to be
tryed by order of parliament.

Vide Rottul' (A)
Law's Booth N° 20.
vid. infra.

ff. *Mandatum Domini Regis Hen' 6, Angliæ pro libertati-
bus sancti Cuthberti Dunelm'.*

ff. Queen

ff. Queen *Elizabeth* confirmed all the old charters (in exprefs words recited) to *James Pilkington*, then Bishop of *Durham*, under the great feal.

May 10. anno 6
Eliz' Regina 1564.

Also by the act of parliament for attainting *Charles* late earl of *Westmorland* for rebellion; the Bishop's right to the forfeitures within the county Palatine is declared and saved; tho' for that time the charge of the war to suppress that rebellion, and other reasons of state, occasioned them to be given to the Queen upon some recompence to the Bishop.

Vide M. S. 30. 52.
vide Stat' 13 Eliz' c.
16.

ff. By act of parliament the county Palatine, with a third part of the river *Tyne*, and of the bridge there, and all the Bishop's royal franchises, and jurisdictions, are restored to the Bishop of *Durham* (then *Cuthbert Tunstall*) and also by Queen *Mary's* charter under the great feal; and the two acts of 7 Ed' 6. whereby it was dissolved, and *Gateside* annexed to *Newcastle* was repealed.

(Super *)
Stat' anno 1 Mariae
Reginae parliament' 2.
c. 3.

Stat' 7 Ed' 6. c. 10.

A decree in the exchequer before the treasurer and barons of the Queen for the Bishop of *Durham's* right to have all forfeitures of lands, and goods (especially by the common law) within the county Palatine, (altho' the soil be the Queen's).

Pascha anno 43
Eliz' Reginae.

And in pursuance and execution of the royal power and jurisdiction of the said county Palatine, anciently all land soldiers, and also all ships of war, within the said

Vide Cambden p.
439. Wharton Angl'
sacra p. 749.

county, were arrayed, armed, and equipped, by the Bishop's commissions, or writs, in his name, and out of the chancery at *Durham*, either to his sheriff, or to commissioners, upon receipt of notice, or command from the King, by his Majesty's writ, or summons, to that purpose; as appears by many such commissions, or writs, upon the rolls of the Bishop's chancery at *Durham*; viz. Commissions for arraying land soldiers, in every ward, or hundred of the county, by the Bishop's commissioners.

ff. By *Anthony Beake* (patriarch of *Jerusalem*) Bishop of *Durham*, in the times of King *Ed' 1.* and King *Ed' 2.* who dyed *March 28. Anno Dom' 1311.*

ff. By *Richard Kellow*, Bishop of *Durham*, in the time of King *Ed' 6.* who dyed *anno 1316.*

Rottul' suo schac'
15. dorso 13.

ff. By *Richard Bury*, Bishop of *Durham*, 4. Feb' anno 10. pont' sui anno 17 *Ed' 3. Regis 1343.*

Rottul' (M) schac'
4. dorso 13.

ff. By *John Fordam*, Bishop, April 12 anno 4 pont' sui anno 5 *Rich' 2. Regis Anno Dom' 1386.*

Rottul' (A)
dorso.

26. ff. By *Thomas Langley*, Bishop, seven times in different years, viz. *Annis 3, 9, 12, 24, 29, 30, & 31. pont' sui*, in the times of King *Hen' 4. Hen' 5. and Hen' 6.* who dyed *anno 1437.*

Rottul' 1. N° 1.
Rottul' (B)

Dom' 34. 20. 24.
Rottul' Nevil (X)
N° 78. D. N° 3.

ff. By *Robert Nevil*, Bishop, twice (viz.) *Annis 10 & 18 pont' sui tempore Hen' 6. Regis Anno Dom' 1438. & 1446.* ff. By

- ff. By *Lawrence Booth*, Bishop, anno 4 pont' sui, anno 1 Ed' 4. Regis 1461. Rottul' (Booth)
M.M. 37, 44, 45.
- ff. By *William Dudley*, Bishop, anno 4 pont' sui, anno 21 Ed' 4. Regis 1480. to serve under *Richard* duke of Gloucester, brother and general of King Ed' 4. against the Scots. Rottul' (A) Dudley
N° 44.
- ff. *In nova forma duci Gloucester' & aliis.* Ibidem N° 40.
N° 28.
- ff. By *John Sherwood*, Bishop, anno 8 pont' sui, anno 6 Hen' 7. Regis 1491. Rottul' (B) N° 21.
- ff. By *Thomas Woolsey*, Bishop, 10 Martij anno 14 Hen' 8. Regis, with the King's instructions annexed anno 1516. viz. Commissions, or writs, of the Bishop's, for arraying ships in the ports of the county Palatine, to attend, and serve under the King's admiral in the North seas. Rottul' F.
- ff. By *Richard Bury*, Bishop, (1. Apr' anno 12 pont' sui anno 19 Ed' 3. Regis, Anno Dom' 1346.) directed *Reginaldo d' Donynton cler'*, & *Johanni d' Nesbyt d' Hartylpol ad arraiand' naves in portu villæ d' Hartilpol*, & *alibi infra libertatem Episc'*, in obsequium Domini Regis Edwardi, subter *Robt' d' Ufford comite Suffolciæ*, *admirallo Regis.* Rottul' (A) ~~schol~~
18 in dorso.
- ff. By *Thomas Langly*, Bishop, by his writ to the sheriff of *Durham*, *Ad intendend' Johanni comiti Huntingdon*, *admirallo* Rottul' (D) N° 3.
Anno 31 pont' sui,
anno 15 H. 6. Regis
1437.

admirallo Regis versus Boream, (vel ejus deputat' per commissionem suam constitut') in arreslando naves pro servitio Domini Regis; vel faciend' alia officium admirallitatis tangentia secus litus maris infra Regiam libertatem Episc' Dunelm' (Regalibus libertatibus nostris, & consuetudinibus Eccles' nostræ Dunelm', d' antiquo tempore usitat' in omnibus semper salvis).

Rottul' (Skirlaw)
Nº 8. & (A) Nº 78.
dorso, anno 4 pont'
fui, Anno Dom' 1402.

The like writ of the same Bishop, reciting the writ to him from King *Hen' 4.* 12 Nov' anno 3 *Hen' Regis.*

Rottul' (Nevil) (B)
Nº 83, 51, 17.

Rottul' AA Nº 25.
tempore H. 6. Regis,
Annis Domini 1440,
1443, 1446, 1482.

By *Robert Nevil*, Bishop, four times in several years, in the time of King *Hen. 6.* by like writs to the sheriffs of *Durham* and *Sadberge*, and *Norham'* severally, (reciting the King's writ to him) *annis 16, 17, & 21 Hen' 6. Regis ad intendend' Johanni Comiti Huntingdon admirallo Regis*, and the fourth writ *anno 23 H. 6. Regis ad intendend' Johanni Nevill Militi (Nepoti Episc')* deputat' dicti *Johannis Comitis Huntingdon admiralli Regis Angliæ*, pro uno anno, with the like salvo for the Bishop's liberties as above.

Pro coynage.
Vide Rottul' (A)
Lawr' Booth, Nº 22.
Rottul' (A) Williel'
Dudly, Nº 13.

Also some of the Bishops had a mint at *Durham*, and coined money there; as particularly in the time of *Lawrence Booth*, Bishop there, in King *Hen. 6.* time, and in the time of *William Dudly*, Bishop; in King *Ed. 4.* time, there were licences for making coining irons at *Durham*.

Vide Rottul' (B) J.
Sherwood Nº 57, 58.
Rottul' (D) Rich' Fox,
Nº 46. dimissio W.
Richardson.

And in the times of *John Sherwood*, Bishop there, in King *Rich' 3.* time, and of *Richard Fox*, Bishop, in *Hen' 7.* time, coinage of *Durham* was leased out. ff. The

ff. The Bishops of *Durham* anciently had a council (in the nature of a parliament) consisting of diverse barons, (called *Barones Episc'*) namely the prior of *Durham*, *Hilton* of *Hilton* Castle, *Conyers* of *Sockburn*, (quere *Hansard* of *Eaenwood*, (*Gaufridus d' Escolland*) *Baronium d' Bulmer*,) before whom appeals from the Bishop's chancery, and writs of error, from his court of pleas, were brought and determined; and money or aids given for defence of the kingdom, and the Bishop's royal liberties.

Pro Barones Episc'
Vide M. SS. Lib' Si-
meon Dunelm' p. 76.
d' Conyers, Escolland
& Bulmer. Vide Whar-
ton's Angl' sacra p.
715. d' Aschatino d'
Wyrce uno Episc'.

ff. *Richard Bury* Bishop anno *Ed' 3. Regis* granted his commission to commissioners, to levy money for obtaining a truce with the *Scots*.

Pro levying mo-
ney. Vide Rotul' (A)
schac' 13.

Thomas Hatfield Bishop, anno 23 *Ed' 3. Regis* granted his commissions *ad levand' 400 marcas argenti, ei concessit per magnates, procures & tot' communitat' Regiæ suæ libertatis Dunelm', pro magnis laboribus, & variis expensis, quas erga Dominum Regem Angliæ illustrem, pro dicta libertate illesa observanda pluries opposuit.*

Rottul' (A) schac'
4. N° 9. in dorso an-
no 4. pont' sui anno
1349.

The like commission to commissioners for every ward, or division, of the county Palatine.

ff. The said Bishop *Hatfield's* acquittance for the said 400 marks, by him receiv'd by the hands of *John* (*Fossour*) then prior of *Durham*, dated *July 22, anno 4. pontific'* *dicti Episc' anno Domini 1349.*

Vide 2 Cartuar' De-
cani & Capituli Du-
nelm' fol' 122.

The

Rottul' (B) Hatfield
schac' 17. N° 4.

The same Bishop granted the like commission to his commissioners to levy a subsidy for the King in *Norhamshire* (parcel of his royal liberty).

Rottul' (C) Tho'
Langly Episc' N° 50.

ff. *Thomas Langly* Bishop, granted the like commission in the time of King *Henry 4* or *5* to enquire of the collection of a subsidy for the King.

Pro butlerage and
ulnage.

Also the Bishop of *Durham* had the royal duty of butlerage of wines, and ulnage of clothes, within the ports, and other places of his county Palatine.

Rottul' (R) Bury
Episc' N° 18, 19.

ff. *Richard Bury* Bishop in the time of King *Edward 3.* by his letters patent made *John d' Nesbyt* burges of *Hartilpool*; *capitalem pinsorem & ulnager' ipsius Episc'* [22 Aug. anno 10 pont' sui] in portu d' *Hartilpol*, & alibi *infra totam Regiam libertatem dicti Episc' Dunelm'*.

Pro Hartlepool peer.
Rottul' (M) schac' 4.
N° 5. schac' 6. N° 9.

ff. *John Fordam* Bishop in the time of King *Richard 2.* granted his commission to commissioners *ad levand' consuetudinem pecun' pro villa seu pera d' Hartilpol.*

Rottul' (AA) N°
63. in dorso N° 36.

ff. *Walter Skirlaw* Bishop (*tempore Rich' 2. Regis*) granted the like commissions *ad levand' pecun' pro Hartilpool*, diverse times.

Also the same Bishop granted an aid *in augmentatione & auxilio Villæ d' Hartilpool.*

Rottul' (B) N° 15.
dorso.

And *Thomas Langly* Bishop in the time of King *Henry 4.* granted the like aid for the same town. Also

Also *Lawrence Booth* Bishop in the time of King *Henry 6.* Rottul' (A) N^o 21.
granted the like commission to levy money for it.

ff. *John Sherwood* Bishop in the time of King *Richard 3.* Pro Insurrections.
granted his commission to enquire *d' insurrectionibus* Rottul' (A) N^o 19.
infra regiam libertatem Dunelm'.

ff. *John Fordam* Bishop (*tempore Rich' 2. Regis*) granted Pro weights and
his commission *ad inquirend' d' ponderibus & mensuris* measures. Rottul' (M)
ibidem. Ich' 4. N^o 5.

ff. The Bishops of *Durham* had also royal tenures, and Protenures and ser-
vices, of or for all, or most of the lands within the
county Palatine, as *knight's-service, soccage, dringage*, car-
riages to his manors, forests and chases, *castle-guarder*
and many others, retained to this day ; (saving where
the act of parliament that takes away the court of
wards and liveries as 12 *Car. 2. Regis c. 24.* makes an
alteration of the tenure to free soccage).

Also the said Bishops anciently had, and still have, all Pro fines and amer-
the silver paid for licences of alienation of lands by ciaments.
fines, or recoveries, within the county Palatine, called
King's-silver at *Westminster* ; but here called the Bi-
shop's-silver, *solut' in Hanaperia Domini Episc'* both
præ-fines and post-fines, as well as all fines, amercia-
ments, and forfeited recognizances, in all the courts
of the county Palatine.

Pro constable castle. ff. Also they had, and still continue a constable of their castle at *Durham*, and a keeper of their wardrobe there, and other officers of the like nature.

Pro forests, &c. Also forests, parks, and chases, and a bow-bearer, foresters, park-keepers, and such like officers.

Pro boroughs, &c. ff. And anciently, and time out of mind, the Bishops of *Durham* have had, and still enjoy, diverse boroughs, *pro* markets, and fairs; and granted charters in their own names, and under their own seals for erecting such boroughs, markets, fairs, and incorporating trades therein, and to make by-laws to exclude foreigners and other such like franchises. (*Viz.*)

Vide Reigstro 2^o Decani & Capituli D. 164. The Boroughs of *Durham* and *Framwelgate*, *Gatefide*, *Sunderland* by the sea, *Stockton*, *Darlington*, Bishop *Aukland*.

Burgo d' Weremne modo Sunderland erect'. Vide Libro Richardi Kellow Episc' Concessio Mercat' [in *Sedgefield*.

Per Chart' Hugon' Pudsey Episc' temp' Hen' 2. Reg'an' 1143. Rottul' (E) N^o 70. *Thomæ Langley Episc' Concessio Mercat' d' Stanhope*.

Rottul' (B) sch' 4. N^o 13. *Thomæ Hatfield Episc' Concessio Mercat' d' Staindropp*.

Charters d' Trades. Rottul' (M). *Lawrentij Booth Episc' N^o 85. Inquisitio d' Corporat' Textorum ibidem in dorso N^o 16. Corporatio d' Cor- diners.*

Cuthberti Tunstall Episc' Charta Incorporationis d' carpenters, joyners, wheelrights, sawyers and coopers. Rottul' (D).

Similis pro cloth-workers, and walker-craft, per Jacobum Pilkington Episcopum anno 7. pont' sui.

Similis pro rough-masons, wallers, and slaters, per Mattheum Hutton Episcopum anno 5. Pont' sui.

Tobiæ Matthew Episc' Anno 37 Eliz' Reginae. The like charter for several trades in *Gatefide.* Rottul' (A).

The like for cordiners there.

The like charter for cloth-workers in *Durham.*

The like charters for trades in *Gatefide.*

Nº 27.
Nº 62.
Rottul' 3. Williel'
James Episc' Nº 70.
Rottul' Johannis
Cofin Episc' anno Car'
2. Regis.

ff. Also the Bishops of *Durham* anciently granted charters or licences, to build or embattle castles, and manor-houses, and for free warrens within the county *Palatine.* Pro Licences to embattle castles.

Licentia Domino Nevill ad construend' castrum d' Raby.

Vide Rottul' (B)
Tho' Hatfield Episc'
fch' 5. Nº 1.

Similis (Domino Lumley) pro battallatione castrum d' Lumley.

Rottul' (AA) Walt'
Skirlaw Episc' in dor-
fo Nº 37.

Similis licentia (Radulpho Ewry Militi) ad battiland' castrum d' Witton (super Weare).

Rottul' (A) Thomæ
Langley Episc' Nº 32.

Similis licentia pro manerio d' Sockburn.

Rottul' (A) Lawr'
Booth Episc' Nº 11.

Rottul' (B) Christ' Bambridge Episc' Dunelm' priori &
Bambridge Episc' N° 64. many more anno
22 Hen' 7. Regis 1507. *Charta Christopheri Bambridge Episc' Dunelm' priori & conventui Dunelm' d' liberis warrenis in parcis & boscis eorum, ad prohibition' fugation' in eisdem (sine licentia eorum) Spa' 10 l. Domino Episc. foristarum.*

Licences to purchase. ff. The Bishops anciently granted licenses to purchase
(*non obstante Statut' d' Mortmain*) &c.

Rottul' (M) Johannis Fordam Episc' sch' 25. N° 13. Licence to the prior and convent of *Durham* to purchase, &c.

Rottul' (AA) Walt' Skirlaw Episc. N° 25. The like to the same prior and convent, and many more of the like nature to others.

Ibid. The like to the abbot and convent d' *Jervaux*.

Pro lunaticks and ideots. The Bishops of *Durham* also (upon all occasions happening) awarded commissions out of the chancery at *Durham*, to enquire of the conditions and estates of ideots and lunaticks, within the county Palatine.

Rottul' (AA) Walt' Skirlaw N° 27. And granted the custom of such as were found with their estates there, (as the King uses to do without the county Palatine,) and still continues it by his temporal chancellor's order.

To *George Harrison* of *Sunderland*, the custody of *William Harrison* a lunatick, in Bishop *Crew*'s time.

Pro Free Lawfon. Rottul' (A) Tho' Hatfield Episc' sch' 16. N° 1. anno 37 Ed' 3. Regis 1363. ff. In Bishop *Hatfield*'s time, anno 37 Ed' 3. Anno Dom' 1363. *John* of *Seaton-Carow*, having thro' ignorance seized

seized a royal fish cast upon his lands there, and being questioned for it, by his charter or deed, acknowledged his trespass, and the right to be the Bishop's, in right of his church of *Durham*, and agreed for 100 marks damage.

The Bishops of *Durham* have also had, and enjoyed, all royal fishes, and wreck of sea, within the county Palatine, and made grants thereof, and anciently awarded commissions out of the chancery at *Durham* in their own names, and under their seals, to commissioners to enquire of and seize such wrecks to the Bishops uses, viz.

Pro royal fishes and wreck of sea.

John Fordham Bishop in the time of King *Richard 2.* granted such commission *Rogero d' Fulthorpe, Radulpho d' Ewry, Williel' d' Elmedon, Johan' d' Preston, & Williel' d' Bakestone, ad inquirend' d' pisce regali pertin' ad Episc' Dunelm' ad terram per mare project' apud Hawthorne, infra præcinctum regie libertatis Episc'.*

Rottul' (M) Fordham sch'.

ff. *Thomas Langly* Bishop in the time of King *Henry 4.* and *Henry 5.* granted the like commission *Roberto Jackman coronatori suo in warda d' Easington*, and an inquisition taken thereupon *d' bonis & merchandixis per naufragium infra regiam libertatem Dunelm' (viz.) infra wapentagium d' Sadberge, eaque restituend' mercatoribus proprietar'.*

Rottul' (C) Tho' Langly Episc' N^o. 27. 28, 26. July anno 26. pont' sui Hen' 5. Rege.

Quere N^o 27. anno 10 Hen. 6. Regis 1432.

Vide commission per dict' Episc' d' attornato faciend' inde pro mercatoribus alienigenis.

Ibid.

The

Ibidem N^o 32. an^o
18 Episc^o 18 Sept^o.

The like commission by the same Bishop for the like wreck.

Rottul^o (X) Rob^o
Nevill Episc^o N^o 50,
& 51. 4 Apr^o anno
8. pont^o sui, anno 24
Hen^o 6. Regis 1447.

Robert Nevill, Bishop, in the time of King Hen^o 6. granted the like commission, *Thomæ Langly militi & aliis, Teste Roberto Beaumont cler^o cancellario suo, pro nave fract^o apud South-shields infra regiam libertat^o Episc^o.*

Rottul^o (D) Rob^o
Nevill Episc^o N^o 28.
4 Feb^o anno 19. pont^o
sui.

The same Bishop Nevill by his charter, *concessit consanguineo suo Thomæ Lumly militi & Domine Margaritæ uxori suæ omnimodas wreccas, ratione fluxus & refluxus maris infra Dominium d^o Stranton, & Seaton Carew, in nostra regia libertate Dunelm^o accidentes, ac nobis quovismodo pertinentes, habend^o eis durante vita nostra, reddend^o nobis inde annuatim ad scaccarium nostrum Dunelm^o pro iisdem wreccis 3 s. 4 d. ad terminos consuetos, reservanda tamen nobis dimidia parte piscium regalium, & magnorum navium ibidem eject^o, & alia parte remanente penes præfat^o Thoma & Margarita pro eor^o labore & custodia durante termino præd^o.*

Rottul^o (A) Williel^o
Dudley Episc^o N^o 15.
1 Julij anno 1 pont^o
sui anno 17 Ed^o 4.
1476.

William Dudley, Bishop, in the time of King Ed^o 4. granted the like commission of enquiry, *Hugoni Suell, & Jobanni Goodyer, legum doct^oribus, & aliis, ad inquirend^o d^o navis fract^o & restituend^o bona navis juxta Hartinpole versus Thomam Lumley, Dominum d^o Lumley, & alios qui navem & bona fregerunt, &c.*

Ibidem N^o 51. 14
May anno 5 ejusdem
Episc^o.

Similis commissio Geor^o Lumley militi & aliis pro navis fract^o apud Newburne Rawe juxta Hartinpole.

ff. King Hen' 8. granted his commission under the great seal to *William Franklyn* clerk, *Sir William Bulmer*, *Sir William Ewre*, Knts. to enquire of, and seize a prize-ship, driven into *Tinemouth* haven in the river *Tyne*, at *South-Shields*, within the Bishop's royal liberty, and to deliver the ships, with the goods and habilliments of war in her to the said Bishop, as of right belonging to him, (in right of his See of *Durham*) allowed by ancient grants and confirmations from the Crown produced and approved.

Rottul' (A) Tho' Woolsey Cardinal' Episc' N° 8. anno 15 Hen' 8. Regis 1523.

ff. By an inquisition taken before *Sir George Selby*, Knt. *Wreccamaris, &c. d' naviculo fract' apud Rivehope sands, & d' battello apud Fulwell sands, infra libertatem regalem Episc' Dunelm' quas Johannes Raud ballivus Episc' seifroit ad usum Episc'.*

Vide Bundell in inquisition' 5 Oct' an' 12 Jacobi 1. Regis Angl.

The Bishops of *Durham* likewise reserved and enjoyed the customs and profits of ships and fish within the ports of the county Palatine, and anchorage, beaconage, and other such like profits and duties accruing thereby.

Pro customs, profits of ships, and fishes, anchorage, beaconage and other duties.

ff. *Hugo Pudsey (alias) d' Pudsea Episc' Dunelm' anno Hen' 2 Regis 1154. per chartam suam d' Burgo d' Weremne (alias) Wearmouth, (modo Sunderland juxta mare) fecit provisionem pro navibus ibidem negotiant', reservando custumas piscium.*

Registro 2. Decani & Capituli Dunelm' 164.

Vide Rottul.

Compotum auditor' Episc' & cancellar' ejus d' redditibus burgi, & passagii trans rivum per ferry-boat ibidem, piscar' ibidem, & pro applicatione navium ibidem, ac pro batellis & cymbis, annis 1 Hen' 2. Regis, Anno Domini 1153. 19 Ed' 3. Regis, 1345, anno 7 Hen' 4. Regis, 1406. 5 Hen' 5. Regis, anno 1418. anno 36 Hen' 6. Regis, 1457, annis 17, 18, 24 Hen' 7. Regis.

Vide Exemplum
anno 19 Ed' 3. Regis
1346.

Thomas Meuvill occupavit quend' locum ibidem vocat' Hindon, pro ædificando naves, & solvit proinde Episc' annual' redditum 2 s.

Anno 1. Tho' Hatfield Episc' anno 19
Ed' 3. Regis 1346.

Per compotum solut' Episc' pro anchoragio navium in aqua d' Blyth in Bedlingtonshire 4 d. pro qualibet nave, toto iij s. iiij d.

Vide Exemplum
Tho' Langley Episc' anno 3 H. 5. Regis
1416.

Compotum d' wrecco maris, prisag' butlerag' ulnag' & aliis escheatis apud Hart, Hartinpole & Seaton Carew.

Registro 2. D. C. ff.
15. anno 32 Ed' 3.
1358.

Thomas Hatfield Episc' dimisit Richardo d' Hethworth Burgum d' Sunderland cum piscariis, & Wolton Yare, ibidem pro 20 annis reddend' 20 s. per ann' Episcopo.

Rottul' (M M)
Lawr' Booth, Episc'
N° 56. anno 2 Ed'
4. Regis.

ff. Dominus Rex Edwardus quartus (sede Episc' Dunelm' tunc vacante) jura Ecclesie Dunelm', dimisit Roberto Bartram Burgum d' Sunderland juxta mare, ac passagium trans aquam ibidem & piscar' habend' durante vacatione Episc', reddendo 6 ad scaccarium Dunelm' & Rex imbuat cymbam.

ff. Christophorus

ff. *Christophorus Bambrigg Episc' Dunelm' per Copiam Rottul' Cur' Halmot' dimisit Radulpho Bowes Militi Burgum d' Sunderland præd' &c. Vide libro Halmot' in officio cursitoris Dunelm' reddend' 6 l. per annum.*

Anno 22 Hen^o 7.
Regis 1507.

ff. *Cuthbertus Tunstall Episc' Dunelm' dimisit Smith, proficua d' anchorage & beaconage.*

ff. *Mattheus Hutton Episc' Dunelm' dimisit Radulpho Bowes Armig' Burgum passagium trans aquam, piscar' ibidem per redditum 4 l. (ultra finem solutum) & inveniendam Cymbam (exceptis mercemoniis).*

Rottul' (A) Matt'
Episc' No 11. vide
Deed Pol' 18. O&
anno 32 Eliz' Reginæ
1590.

ff. *Tobias Matthew Episc' Dunelm' dimisit Evans Williams le anchorage, & beaconage, &c.*

Quere copy Rottul'
Halmot' per patent'
ult' Majj. anno 4 Jac'
1. Regis 1606.

N. B. The Bishops of *Durham* successively ever since hitherto have frequently renewed these leases of the borough, ferry-boat, passage, Anchorage, beaconage, wharfage, plankage, meetage, and tolls of *Sunderland* port, and market, and fairs; and they are now in two leases (to wit) the borough, with the courts, markets, fairs, tolls, anchorage, beaconage, &c. to *William Lambton*, Esq; and the ferry-boat passage, the meetage, and tolls of herbs, fruit, and roots, to *Walter Ettricke*, Esq; for twenty one years from the present Bishop.

And the duties upon anchorage, beaconage and wharfage, &c. have been long contested on the North-

E

fide

fide of that port and river of *Weare*, by Sir *Thomas Haslerigg*, and Sir *Thomas Williamfon* Barts. in right of the late cell of *Monk-Wearmouth*; and the anchorage and beaconage are decreed and confirmed with the Bishop's lessee, tho' the beacons all stand on the North-side of the river.

* infra.
Anno 10 Car' 1. per
Bowes to Lambton.

Anno 11 Car' 1.
furr' per Bowes to
Collingwood and
Power.

Anno 15 Car' 1.
furr' per eos to Lil-
burne.

N. B. Also the Bishops of *Durham* still continue and lease out the anchorage, plankage, and meetage, within the port of *Stockton upon Tease*, and also the ferry-boat and passage over the river there.

Anno 31 Eliz' cop'
Halmot' Rob' Lamb-
ton, anno 43 Eliz' cop'
Toby Matthew Episc'
—— Bowes.

N. B. And likewise the anchorage, beaconage, plankage, wharfage, ballast-key, and wastes between the high and low water marks of the river *Blyth* in *Bedlingtonshire*, and all the wrecks of the sea on that coast.

Supra.
Vide cop' eur'
Halmot', anno 28
Eliz' per Rich' Neille
Episc' Johanni Heath
Arm'.

Anno 29 Eliz' 2.
cop' Rad' Bowes.

N. B. also the wastes between the high and low water marks of the river of *Weare*, at *Sunderland* port afore-said, are now held, and enjoyed, under the Bishop's title; some by ancient grants of copies of court roll, in fee, or by leases for lives, or years.

Rottul' (M) Cuth'
Tunstal Episc' N° 10.
anno 1 Mariae Reginae
1554.

N. B. also the Bishop's of *Durham* both anciently, and still continue leases of divers houses, and shops, erected upon the South part of *Tyne* bridge, and also of *Chester* dam, and other dams over the river *Weare*, and above the bridge there.

And

And the Bishops of *Durham* anciently granted their commissions out of the chancery at *Durham* to their commissioners under their own seal, as well for the conservatorship of all the rivers within the said county Palatine, and for preserving the fry of salmon, and other fish, and for sewers, &c. and to limit or abate *Yares*, and other erections in the rivers, &c. *salvis* (Episc') omnibus amerciamentis, &c.

Pro conservator-
ship.

Sewers.

ff. *Commissio Richardi Bury Episc' ad inquirend' d' impedimentis navium in aqua d' Tyne.*

(viz') '
Rottul' (A) Rich'
Bury Episc' sch' 16
anno Ed' 3. Regis.

ff. *Commissio Johannis Fordham Episc' (14 Martij anno pont' sui & 7 Richardi secundi Regis 1384) Rogero d' Fulthorpe, Radulpho d' Ewre, Willielmo d' Fulthorpe, & Thomæ d' Hartilpole, ad inquirend' d' aqua d' Skerne obturat' in ripis.*

Rottul' Fordham
sch' 3. N° 3. dorso.

ff. *Similis commissio Walteri Skirlaw Episc' (10 Apr' anno 2 pont' sui anno 13 Rich' 2. Regis 1390) ad supervi- dend' aquam d' Weare, & Gurgites ibidem excessivos re- ducend' per juratores, &c.*

Rottul' Skirlaw
N° 35. dorso.

ff. *Commissio Thomæ Langly Episc' 3 Feb' anno 14 pont' sui anno 7 Hen' 5. 1420. Radulpho d' Eure chivalier, Richardo d' Norton, Jacobo Strangeway, Thomæ Fulthorpe, Christophero Boynton, Willielmo Chancellour, Roberto Strangeways & Johanni Aislaby, ad inquirend' su- per defect' aquar' secundum statut', & commune passagium navium, & battellorum in magnis ripariis &c. salvis Episc' omnibus amerciamentis, &c.*

Rottul' (B) Tho'
Langly Episc' N° 48,
anno 7 H. 5. Regis
1420.

Rottul' (E) N° 41.
28 Aug' anno 19.
pont'.

ff. *Similis commissio per eund' Episc', Radulpho comiti Westmorland Richardo Neville cheviliier, Willielmo Eure cheviliier, Thomæ Suerties cheviliier, Roberto Conyers, Tho' Holden seneschallo, Episc', Willielmo Chancellour, Roberto Eure, Christophero Boynton, Roberto Strangeways, Magistro Forestarum Episc', & Johanni Aislaby Arm'.*

Ibidem N° 3.
Feb' anno 24 pont'.

ff. *Similis commissio per eund' Episc' Willielmo Eure militi, Roberto Hilton militi, Willielmo Bowes militi, & aliis, ac Vicecomiti suo Dunelm' & Sadberge.*

Rottul' (C) N° 63.
9 May anno 31 pont'.

ff. *Similis commissio per eund' Episc' Thomæ Holden senes' Dunelm', Roberto Hilton cheviliier Vicecomiti Dunelm', Willielmo Lomley cheviliier, Willielmo Chancellour constabular' Dunelm', & aliis.*

Rottul' (A) Rob' Nevill Episc' N° 51.
25 May anno 2 pont'
N° 84. 11 May anno
pont' 4.

ff. *Similis commissio per Robertum Neville Episc' pro aquis d' Weare & Teas &c. bis.*

Rottul' (A) Lawr' Booth, N° 2. 4 Mar'
anno 11 pont' anno
8 Ed' 4. Regis 1468.

ff. *Similis commissio per Lawrentium Booth Episc' pro aquis d' Tease, Skerne, Gawnles, Weare, Tyne, & Darwent, infra Com' Palatin' Dunelm' sur' Stat' d' Westm' 2 & 3 Rich' 2.*

Rottul' 2. fede
vacante post mortem
Rich' Neille Episc'
No 34.

ff. *The like commissions pro sewers out of the chancery at Durham, and under the county Palatine seal, 5 Apr' anno 4 Car' 1. Regis.*

Rottul' 3 Thomæ
Morton Episc' N° 24.

ff. *The like commission anno 15 Car' 1. Regis.*

ff. The

ff. The like commission 7 O&P anno 15 Car' 2. Regis 1663. for measuring the keels or lighters, and coal boats of *Sunderland* port. Rottul' (A) Johannis Cosins Episc' N° 35.

ff. N.B. 3. Commissions per *Thomam Langly Episc' ad inquirend' super defect' piscium aquarum* (i. e.) *d' salmonibus non capiend' in tempore juxta Statut' d' Westm'* 2, 3. Pro fry of fish.

ff. *Similis Com' per Robert' Nevill Episc' ac Lawrentium Booth Episc'*, Rottul' (A) 1. Rottul' (A) 50. 88. Rottul' (X) 32. Rottul' (M) 23. Rottul' (E) N° 16. Sept. anno 23. pont' ibid. N° 2. anno 24. Rottul' (C) N° 62. anno 31. supra.

Christopheri Bambrigg Episc' N° 67. Patent per Christophorum Bambrigg Episc' Dunelm' Johanni Racket, pro vita sua of the conservatorship of all the Bishop's rivers of *Tease, Weare, Tyne, &c.* within his bishoprick, and for preserving salmon, and fry of fish, according to the law and custom of *England* and the Bishop's royal liberties of *Durham*. *Salvis — amerciamentis.* Rott' (B) anno 22 Hen' 7. Regis 1507.

ff. *Breve dicti Roberti Neville Episc' vicecomiti Dunelm' ad præmuniend' (vel scire faciend') separal' personis infranominat' ad diminuand' seu amovend' separal' Yaras erect' in aqua d' Weare, contra Statut' ante Festum Sancti Bartholomæi Apost' prox' sub pæna 100 Mercar' Episc' solvend' juxta Statut' super Inquisition' capt' coram Tho' Lomley Militi & sociis suis, Justiciar' Episc', per Commission' suam ad supervidend' aquam præd', viz.* Pro Yares. Rottul' (B) Robert Nevill Episc' N° 87. 24 July anno 2. pont' anno 18 Hen' 6. Regis 1440.

Versus

Versus Robert' Jackson, pro Yaris vocat' Marle-Yare, & Chestan-Yare, versus Johan' (Wessynton) priorem Dunelm' pro Drilad-Yare, Eb-Yare, versus Johan' Hedworth, pro Owens-Yare, versus Lomley Chivilier, pro Outlaw-Yare, versus Williel' Bowes Militem pro Rowden & Biddicke-Yares, versus Robert' Hilton Militem pro Weydiles-Yare, & Synden-Yare, quas cum pilis, palis & sepibus nimis excessivè in profundior' partibus aquæ præd' in filo ejusd' aquæ posuit, levaverunt & injustè construxerunt, per quas filus aquæ præd' totalit' est obstruct' ; ita quod homines commune passagium ibidem cum navibus, naviculis, battellis, & keeles habere, — nec salmones, nec salminiculi per filum aquæ præd' transire, non possunt, prout ante hæc tempora transire solebant, contra formam Satut' — ad nostri grave dampn', & totius communitat' Regiæ nostræ libertatis Dunelm' depauperationem manifestam.

Rottul' (M) Rob' ff.
Nevill Episc' N° 66.
4. May anno 14 pont'.

Commissio per Robert' Nevill Episc', Robert' Ogle sen' militi, Radulpho Gray Armig', Johan' Heron d' Forth Armig' & Rich' Weldon, ad inquirend' d' Yaris Fishgarth, &c. in aqua d' Tweed, usque filum aquæ infra Dominium Episc' d' Norhamshire & Elandshire.

Pro Vice-admiral and
water-bailiff.

ff. *Ralph Bowes* was vice-admiral there under the
Bishop anno *Eliz' Reginae*.

6. March anno 20:
Eliz' Reginae 1626.
Vide Decree Canc'
Dunelm', Judge Hut-
ton Attorn' Episc' &
Robert' Woodrington
M. D. G. 20. anno 2.
Car. 1. 1626.

ff. *Richard Barnes* Bishop of Durham per literas patentes suas constituit *Williel' Whitehead* vice-admiral' suum, & ballivum d' Sunderland, sub comp' annuatim ad auditum Episc' qui vixit usque annum 2^m Jacobi primi Regis.

A patent from *Lawrence Booth* Bishop to *Ralph Bowes* Esq; of the *Balywicke* of the burrough of *Sunderland*. Rottul' (M) Lawr' Booth Episc' N° 80. anno 16 Ed' 4. Regis 1476.

ff. *William James* Bishop by patent made *John Raud* his water-bailiff of *Sunderland* port, and to collect the ballast-duties, and anchorage, beaonage, rivage, and other customs and profits due from ships trading there, to the Bishop's use. Rottul' 1 Willielmi James Episc' N° 118 (7 July 1609) anno 7 Jac' 1. Regis. Vide official' auditor' Episc'.

ff. *Richard Neille* Bishop renewed that patent to same *John Raud* of that office, &c. 11 Octob' 1612. anno 20 Jac' Regis.

ff. *Richard Bartlet* was water-bailiff there under the Bishop. Anno 1616.

ff. *Nicholas Whitfield* was water-bailiff there under the Bishop, and he deputed *William Cadwell* therein. Anno 1618.

And then that office was granted, with the duties of anchorage, and beaonage, &c. by lease from the Bishops successively ever since, and are still held and enjoyed by lease renewed, who enjoy it and the leases together. 13. Octob' anno 3 Car. 1. 1627. per Rich' Neille Episc' Williel' Phillipson d' majori Dunelm'.

By *Tho' Morton* Bishop to *Sir William Bellasse*, Knt. and others (in trust for the use of the city of *Durham*). 16 Nov' 1633. anno 9 Car. 1. Regis.

One *Michael Crake* (a footman or other servant to his Majesty) was made water-bailiff of *Sunderland* port, first by About anno 13 Car. 1. Regis 1638.

by his Majesty's patent, and afterwards (in the vacancy of a Lord High-Admiral) by lease, and after that by the Earl of *Northumberland* Lord High-Admiral.

N. B. But he never enjoyed it peaceably, but was always opposed in it by *Thomas Morton* then Lord Bishop of *Durham*, or his lessees of that office and port-duties, which was contested by orders, and counter-orders, until the grand Rebellion, and the exclusion of the Bishops.

Anno 1642.

Crake obtaining an order of the Commons of Parliament to prohibit the clearing of ships without his fees and warrant:

Anno 1643.

The Bishop's lessees obtained another order, revoking that to *Crake*, and quieting the lessees in the possession untill it should be determined by law, which *Crake* did not prosecute at law, and so the lessees continued the possession till their lease expired during the Common-Wealth.

9 Nov' anno 1649.
* for 28⁵ l. 9 s. 6 d.

Vide * 4 Nov' 1654.
deputation by Col.
Fenwicke to Robert
Adamson.

When Col. *George Fenwicke* purchased of the Usurper's Trustees for sale of Bishop's lands, &c. the reversion, under which he enjoyed it untill the happy Restauration of King *Charles 2.* when the Bishop (*Dr. Cofins*) entred and granted a new lease of all the profits, duties, and offices aforesaid.

Vide * 1655. a letter from Col. Fenwicke to Adamson not to pay the ship-duties to *Crake* or any else.

And *Michael Crake* being then living, he revived his claim (to the water-bailiff's office of *Sunderland* port) which was opposed by Bishop *Cofins*, and the whole

matter was referred by his Royal Highness the Duke of York then Lord High-Admiral, to Dr. *John Exton*, then Judge of the Admiralty of *England*, to examine and report.

Dr. *Exton* examined, and reported the Bishop's claim and right to it to be good, and therein instanced and recited diverse of the ancient charters, records and evidences before mentioned, to ground and warrant his report, which was allowed.

1. July 1663.

Vide Report.

Whereupon his Royal Highness, then Lord High-Admiral, granted a warrant to summon *Crake* to shew cause why his patent should not be revoked, & *nisi causa* to vacate his grant; and no cause being shewn therein, the Bishop continued the possession.

20. July 1663.

ff. *John Cofins* Bishop, by his letters patent under the county Palatine seal, made *John Tempest*, Esq; his Vice-Admiral, *quam diu se bene gesserit*.

Rottul' (A) Johan' Cofins Episc' N^o 17.
21. Feb. 1661. anno
14 Car. 2. Regis.

ff. The same Bishop then also (by his like patent) made *Richard Matthew*, Gent. his Judge of his Court of Admiralty.

Ibid. N^o 18.

ff. Also he then made *Walter Ettricke*, Gent. his Register of the said court by like patent, afterwards *William Blakestone*, Esq; *Charles Mountague*, Esq; and *William Lambton*, Esq; were successively Vice-admirals, by the like patents from the Bishop of *Durham*.

Ibid. N^o 19.

And Sir *Richard Lloyd*, Knt. and *Henry Lambton*, Esq; were successively made Judges of the said Court of Admiralty by the Bishop of *Durham's* patents.

And the said *William Lambton*, Esq; *Henry Lambton*, Esq; and *Walter Ettricke*, now are patentees of the said several offices under the Right Honourable Lord *Crew*, Baron of *Stean*, present Lord Bishop of *Durham*.

N. B. The High Court of Admiralty hath frequently (since the Restauration) admitted of appeals from the Bishop's Court of Admiralty at *Sunderland*.

16. Dec. 1662. After the Restauration of the King and Church, Dr. *John Cosins* Bishop of *Durham* granted a new lease to Mr. *Robert Adamson*, of the borough and port of *Sunderland* by the sea, and of all the anchorage, beaconage, wharfage, ballast-shores, &c. there for 21 years, rent 10 l.
anno 14 Car. 2. Regis.

15. Octob' 1676. That lease was surrendred and renewed by Dr. *Nathaniel Crew* Bishop to *Edward Arden*, Esq; Mr. *George Forster*, and the said Mr. *Robert Adamson* for 21 years, rent 10 l.
anno 28 Car. 2. Regis.

15. July 1682. anno 34 Car. 2. Regis. Renewed by the same Bishop *Crew* to Mr. *George French* for 21 years, rent 10 l.

Since renewed to *William Richardson*, Esq; of *London*.

Also

Also renewed to *William or Henry Lambton, Esq;*

I am aware that it may be said, that by publishing the first part of this Tract, I have furnished the Bishop with evidences of his ancient claims or rights, contrary to, and in prejudice of the design of this Work : But I rather think it necessary, thereby to shew his over great power, and that it becomes me neither to write more nor less than the truth, according to the maxim of *Cicero*, *Ne quid falsi dicere audeat ne quid veri non audeat*, an author should not be afraid to speak the truth, nor should he dare to speak more than the truth : And I am not conscious that I have in any degree departed from that rule ; I could indeed be more particular in my complaints, name persons, and say more severe things, and even those very true ; but I reserve them for a reply, and proof upon a proper occasion.

P A R T II.

THE subjects of this kingdom of *England* being one community, having the same interest, and an equal right to his Majesty's protection, and to the benefit of the laws of the realm, ought in all reason and justice to be put upon the same level, and governed by the same laws, as well in one part of that dominion, as in the other; and why this part of the country should be under singular rules, and embarrassed by the interposing power of a fellow subject (altho' a Peer as a Bishop) a Count Palatine of *Durham*, it seems not consistent with their interest, nor the common benefit of the realm; especially as the foundation for this separate government, or jurisdiction, is removed by the union with *Scotland*; and is thereby become needless, and rather a grievance to the subjects of this county Palatine, and is really a thorn in their sides.

The great power of the Bishop has been already set forth in the first part of this Treatise: I shall therefore in a summary way produce some instances of the inconveniences which must inevitably follow the continuance of that power, and the necessity either solely to dissolve and take it away, and remit it to the Crown; or to have the abuses therein speedily corrected, remedied and reformed; or propose an expedient for continuing what is good, and rescinding what shall be esteemed

evil therein : and in this I shall only offer what I humbly think reasonable to the consideration of persons of a superior genius ; facts as they appear nakedly true, without any ornament or disguise ; and submit the whole to the justice of the Legislature, and the censure of the candid reader.

I write not for gain, nor am I ambitious of the name of an author, but love to my native country, the impotunity of my fellow sufferers, and a just resentment of the vile usage I have met with, engaged me in this undertaking. I am no enemy to the Clergy in general, but a zealous well-wisher to the good and valuable Ministry, and such of them as truly regard the dignity and sacred Office ; and wish them all well provided with a plentiful revenue for their maintenance, so as they may stick to their function, and not intermeddle in secular affairs : for 'tis reasonable that they who serve at the Altar, should live by the offerings at the Altar ; the labouring ox should not be muzzled : but such as aim at *grandeur* and *riches* only, neglecting their duty, *oppress their flock*, and reside not for the *greatest part* of their time upon their benefices, deserve the contempt and odium of mankind : and as the Right Reverend and worthy Lord Bishop of *London* (in his excellent Pastoral Letter) says, " such cannot be loved or esteemed, nay suffered or borne " with : " but the Order is not to be disrespected for the fault of particular persons.

I make this apology with sincerity, knowing the truth of my own heart to be zealously affected to the established Church of *England*, its sacred Ministry, and the

the Protestant Succession; and lament the injury done the Church by the unhappy conduct of some of its Ministers.

It is true Clergymen are subject to human frailties, as others are, and reasonable allowances ought to be made for such frailties; the office is not the worse for the fault of the professor or minister: there was a *Judas* among the twelve, but the remaining eleven aspired not to be Lords or Princes, nor claimed temporal power, or the use of the sword; neither did their pious successors for the three or four first centuries, till (like the sons of *Eli*) the fat of lambs, and the superstitious mistaken piety, rather bigotry of the laity, made them wanton and luxurious; and the decay and ruinous estate and division of the *Roman* Empire gave them the handle or opportunity to grasp at temporal power, and luxuriantly triumph over the folly and weakness of their lay patrons: yet of the Episcopal Order of this realm (to their honour be it said) none of them set up or aspired to so great temporal power as the Bishops of *Durham*, who alone have long used and boasted of their united power of the Sword and Gown, as appears by the maxim found in *Bracton*, DUNELMIA SOLA JUDICAT ENSE ET STOLA.

At the beginning of the late Revolution, an attempt was made in parliament, by many worthy patriots, to take away this county Palatine, and temporal power of the Bishops of *Durham*; but it did not succeed; because the Government was not then well settled, and there was not then an union with *Scotland*; and therefore it was not thought prudent to make any alteration in the administration

ministration of affairs, in this county, bordering upon *Scotland* ; only by taking away the Lieutenancy from the then Bishop, and lodging it in the late Right Honourable *Richard* Earl of *Scarborough* deceased : But these objections being happily removed, the nation well settled, and a union with *Scotland* obtained, gives encouragement to the subjects of this county, humbly to lay this matter before the Legislature for their consideration, and hope 'tis a proper season so to do.

It has been generally esteemed, and so many of the most eminent lawyers have been heard to say, that all county Palatines, franchises, peculiar liberties, and inferior jurisdictions, were a prejudice to the subject in general, and cramp the execution of the laws, and that it was most reasonable, that all his Majesty's subjects should be on the same bottom, and governed by the same laws.

The Bishops of *Durham* have for many ages claimed and held this county Palatine by prescription ; and the reason that hath been always assigned for the usage of such county Palatine was, that it bordering upon *Scotland*, then frequently in wars with *England*, it was requisite to lodge an immediate power in some neighbouring Nobleman, to raise troops to defend the country, and oppose the sudden inroads of the *Scots*, and that (for expedition sake) was often necessary before the Kings of *England* could be timely consulted, they being often abroad in foreign dominions in wars, and upon other publick occasions.

And most of the royal grants, or confirmations of grants to the Bishops of *Durham*, touching the *Jura Regalia*, prefaced it to be for the advantage, common weal,

weal, and better defence of the realm against the *Scots*; and the county Palatine of *Chester* was created by *William* the Conqueror, for the like reasons, against the *Welsh*; with this difference, that *Hugh Lupus*, Earl or Count Palatine of *Chester*, was a lay-man, and nephew to the King, who had therefore the greater confidence in him.

In those dark and superstitious times the Church had great influence over the Princes, and great power over the common people; and it was very rare for a Prince to trust a lay Peer with a lasting power in the civil regimen, unless he was a near relation, and solely dependent on his family.

The Clergy had the little learning then in being, and enjoyed the offices of state and law: the Bishop and Monks of *Durham* claimed all, and really held greatest part of the lands from *Tease* to *Tyne*, and along by the sea coasts of *Northumberland* to *Tweed*; viz. *Island-shire*, *Norham-shire* and *Bedlington-shire*, *Coldingham-Abbey*, and other lands in *Scotland*; the city of *Carlisle* and fifteen miles round it in the county of *Cumberland*, and *Tiviot Dale* and *Tindale* in the county of *Northumberland*; all which was called St. *Cuthbert's* patrimony, and the people called holy work-folks.

But King *Henry I.* took from Bishop *Ranulphus Carlisle* and *Tindale*; and King *Edward I.* took other parts from the Bishops of *Durham*: of these lands lying between *Tyne* and *Tease* and *Norham-shire*, *Island-shire* and *Bedlington-shire* and *Crake*, was composed this county Palatine, and the Bishop had *Jura Regalia* therein.

And the Church been possessed of other great estates and royalties in other counties, particularly *Allerton-shire*,
Howden-

Howden-shire and *Crake*, within the boundaries of the county of *York*, and other lands and estates in *Lincolnshire*. It was thought prudent in the policy of those times to lodge that great power, now and heretofore claimed by the Bishop and Count Palatines, in the Church; not only as the Church had the greatest interest and estate therein; but that it was not safe or good policy to trust so great a power in the hands of a temporal Lord, or subject, by way of inheritance, who might thereby perpetuate that power in his family, and make a rent or division in the realm.

I need not urge as a farther reason that the Clergy were then covetous, and grasped at temporal power as well as ecclesiastical profits.

But I shall now consider the ill use they have made thereof in this county, which they have almost wholly ingrossed to themselves, and the many inconveniencies and prejudice to the subject which now attend it in this county; which as it's used may properly be termed an ecclesiastic state, and different from all other counties in *Britain*; for it will appear, that as this was all along called *St. Cuthbert's* patrimony, the subjects thereof labour under as great difficulties and discouragements, as the laity do in *St. Peter's* patrimony in *Italy*, where they have a Pontiff for their Prince.

I think 'tis a just observation of all historians and travellers, that the subjects and tenants of ecclesiastical Princes (who are only tenants for life) are more oppressed, and their dominions wasted, and trade and improvements discouraged, than under temporal Princes, whose interest it is, for the sake of their own posterity, to provide for

and govern well their subjects, incourage industry, and improve their dominions with mildness and tranquillity; altho' in saying this, I mean not any reflection upon any part of this realm, save only of the county Palatine of *Durham*, and of ecclesiastic estates in foreign dominions: But it must be allowed that Ecclesiastics holding their estates only during life, make the most use of their time, with little regard to their successors, or tenants interest: Numerous instances of this might be urged; but 'tis needless in this learned age, to shew by what arts and pious frauds the Clergy obtained those vast powers and possessions, in imposing on the superstitious ignorance of the ages before the Reformation: And the evil of Nepotism, and the oppressions attending it hath been as flagrant in *St. Cuthbert's* patrimony, as ever it was in *St. Peter's*, in proportion to the limits and revenues of each estate, as may be evinced by numerous grants of the Bishops of *Durham*, to their relations and favourites; an account whereof shall in due time be published, as also of the feuds and suits, troubles and controversies, occasioned thereby.

But it must be remembred in honour to the late Bishop *Morton's* memory, that there doth not appear any grants from him to his relations; and it is certain that when he had occasion to remove from his See to *London*, he generally left commissions under his hand and sign manual, with Sir *William Bellasyse* and other gentlemen of the county, to settle terms with his tenants for renewals of leases, and to determine all other differences betwixt him and his tenants, to prevent all misrepresentations and impositions either of his stewards or servants
upon

upon the tenants; and generally complied with the representations of the gentlemen of the country.

He lived nobly and hospitably, and gave great charities, and generally had twenty or thirty young gentlemen of good families in his household, which he educated and preferred; and left no more effects at his death than 10*l.* in money, which he gave to the poor, and a silver chalice, which he left to the Church of *Easton-Manduit*, in *Northamptonshire*, where he died and was buried, leaving behind him a glorious character for his loyalty, learning, piety, and extensive charity.

The Bishops of *Durham* claim *Jura regalia inter Tynam & Teisam* by prescriptions strengthened by sundry confirmations; these confirmations do for the most part mention *Dunelm' manerium & wapentagium d' Sadberge, Aukland, Darlington, &c. infra patriam vocat' episcopat' & libertat' regalis sancti Cuthberti Dunelm' inter Tyne & Tese*. Confirmations are no concessions, nor pass any thing not granted before: So his title being by prescription, is no sufficient warrant at this day, by the recent expositions of the law for many of his liberties in the King's case.

It is requisite to view his claims in *Quo Warranto*, and to consider which of them are so individual in the Crown as not to be separated from it by grant, but for the life of the grantor only, much less by prescription; and which of them are recent or by grant, or by prescription for time immemorial; and which of them are salutary or prejudicial to the subject.

King Richard 1. granted to Hugh Pudsey Bishop of Durham, *manerium suum d' Sadberge cum soca, toll' & theem, infangtheif, &c. cum placitis ad Coronam pertinent'.*

This manor had been in the Crown ever since the Conquest till then; how therefore can he prescribe *inter Tinam & Teisam* when he holdeth *placita Coronæ* there, by this grant? viz.

CHARTA Richardi primi Regis Angl' qui regnavit Anno Domini 1189.

Concessio maner' & wapent' d' Sadberge.

RICHARDUS D. G. R. A. D. R. & A. Comes Andegar' Archiepiscopis & Episcopis, Comitibus, Baronibus, Vicecomitibus & omnibus ballivis & ministris suis totius Angl' salutem; Sciatis nos dedisse & concessisse, & præsentī Charta confirmasse, Deo & beato Cuthberto, & Ecclesiæ Dunelm', & Hugoni Dunelm' Episc' charo consanguineo nostro & successoribus ejus in puram & perpetuam eleemosyn' (pro animab' patris nostri & antecessor' nostrorum, & pro salute nostra & Heredum nostrorum, & pro stabilitate & incremento regni nostri) manerium nostrum d' Sadberge cum wapentagiis ad idem manerium pertinentibus, & cum omnibus aliis rebus ad illud pertinentibus, tam in honoribus quam in terris cultis & incultis, in viis & semitis, in pratis & pasturis, & stagnis & molendinis, in aquis & piscariis, & servitium Petri d' Caron & heredum suorum de feodo unius militis d' Seatona & Oveton, & servitium Thomæ d' Amundevill & heredum suorum d' feodo unius militis d' Coatham, & d' Treiford, & servitium filii Godfridi Baad & heredum suorum d' feodo duarum partium unius militis d' Middleton & d' Hartburne, quas

quas terras nobis tenebant inter Tinam & Teisam, cum omnibus aliis ad præd' feoda pertinentibus in excambium pro servitio trium militum quod Philippus d' Kyme d' ipso episcopatu in Lincolnsira tenebat, & pro feodo duorum militum quod Girardus d' Camul d' eod' ibidem tenebat, & pro feodo unius militis quod Baldwinus Wac & filius Rogeri d' Osenill ibidem in eod' tenebant; quare volum' & præcipim' quod prædict' Hugo Episc' & successores sui præd' duo feoda militum & duas partes feodi unius militis cum præd' manerio d' Sadberge & wapentagiis (sicut prædictum est) teneant, habeant & possideant libere, quiete & honorifice, cum omnibus rebus ad ea pertinentibus, in bosco & plano, cum sôchâ & sachâ & toll & theem & infangtheif, & cum omnibus aliis libertatibus & liberis consuetudinibus, & cum placitis ad Coronam pertinentibus, sicut nos nostri in propria manu nostra habeamus, & sicut ipse Episc' habet & tenet alias terras suas & feoda militum in Episcopatu suo; & ut tam ipse Episc' quam successores sui disponant d' honoribus & terris ad idem manerium pertinentibus ad libitum suum & voluntatem sicut d' aliis honoribus in terris suis in eod' episcopatu suo faciant; hiis testibus, Baldwino Cantuar', Gualtero Rothomag' & Johan' Dublin, Archiepiscopis; Regin' Bathon', Hugone Lyncoln', Johan' Norwich', Williel' Wigorn', Hugone Coventr', Selcido Cicestr', Gilberto Roffen', Johan' Oxon', Episcopis; Dom' Johan' fratre Dom' Regis, Williel' d' Mandevill, Comite d' Essex, Roberto Comite d' Leicestr', Hamelino Comite d' Waren, Gualeramo Comite d' Warwick, Williel' Comite d' Arundell, Richardo Comite d' Clare, Williel' Comite d' Salisbur', Rogero Bigoto, & Williel' Mariscallo Dom' de Strigeill. Dat' anno 1 Regni nostri 18. die Decembris apud Gaitmonant per manum Williel' d' Longo Campo Cancellarii nostri.

CHARTA

CHARTA secunda Regis, &c.

RICHARDUS D. G. R. A. D. N. & A. & A. Archiepiscopis, Episcopis, Abbatibus, Comitibus, Baronibus, Justiciariis, Vicecomitibus, & omnibus ministris & fidelibus suis totius Angl' salutem; Sciatis nos reddidisse Deo, & beato Cuthberto, & Ecclesie Dunelm', & Hugoni Episc' & successoribus ejus in perpetuum, manerium d' Sadberge in wapentagiis & feodis militum, & cum omnibus pertinentiis quæ prius eis dederimus, & Charta nostra confirmavim' pro sexcentis marcis quas nobis inde donavit; quare volum' & præcipim' ut ipse prædict' manerium d' Sadberge cum wapentagiis & feodis militum cum omnibus pertinentiis in puram & perpetuam eleemosin' libere, quiete & honorifice habeant & teneant, sicut Charta nostra quod inde habet, testat'; & bene volum' & concedim' quantum ad nos pertinet, si quis inde vim ei vel molestiam contra Chartas, & confirmationes nostras fecit, iram & maledictionem Dei, & nostram incurrat; testibus, B. Cantuar' Archiepisc', H. Saresb' Episc', Gileb' Pipard, Martin' d' Verdun'. Dat' apud Massill per manum Williel' filii Richardi 5. die Augusti regni nostri anno primo.

Is erat tenor Chartæ nostræ in primo sigillo nostro, quod quia aliquando perditum fuit & dum in Almänna capti essemus sub aliena potestate, constitut', imitatum est, innovationis autem hujus hii sunt testes, Magister Mangerus, Magister Rogerus d' Sancto Edmundo, Robertus Capellanus, Waganus Brite, Williel' Mariscallus, Warinus filius Geroldi, Radulph' d' Arden. Dat' per manum Eustach' Elie' Episc' Cancellarii nostri apud Lions 7. die Decemb' anno regni nostri decimo.

CHARTA

CHARTA Johannis Regis.

JOHANNES D. G. R. A. D. H. D. N. & A.
 & C. A. Archiepiscopis, E. A. C. D. J. Vicecomitibus,
 & omnibus ballivis & fidelibus suis; Sciatis nos concessisse &
 præfenti Charta confirmasse Deo, & beato Cuthberto, & Ec-
 clesiæ Dunelm', & Philippo Dunelm' Episc' & successoribus
 suis in perpetuum, manerium d' Sadburga in wapentagiis, &
 feodis militum, & cum omnibus pertinentiis suis, in bosco
 & plano, cum soca & sacca, & toll & theam, & infange-
 neth, & cum omnibus libertatibus & liberis consuetudinibus,
 & cum placitis ad Coronam regiam pertinentibus, sicut Rex
 Richardus frater noster in propria manu sua habeant, & sicut
 idem Episc' melius & liberius habet & tenet alias terras suas,
 & feoda militum in episcopatu suo. Concedim' etiam & con-
 firmavim' eisdem Ecclesiæ, & Episc', & successoribus suis,
 villas suas d' Creic & d' Cliffe cum nemoribus ad eas per-
 tinentibus, liberas, exemptas, & quietas a foresta nostra,
 & ab omni regardo forestiarum, ita quod inde ad libitum
 suum d' ipsis claudendis vel assertandis, sicut voluerunt ope-
 rentur; quare volum' & firmiter præcipim' quod prædict'
 Episc' & successores sui in posterum habeant & teneant om-
 nia prædicta bene & in pace, libere & quiete, integre &
 honorifice, in omnibus locis, & in rebus, cum omnibus liber-
 tatibus & liberis consuetudinibus suis, sicut Charta Regis
 Richardi fratris nostri rationabilit' testat'; testibus, Williel'
 Marisco Comite Pembr', Williel' Comite Sarisbur', Williel'
 d' Brakos, Roberto filio Rogeri, Hug' Bard, Williel' Brywer,
 Hugone de Neville, Thoma Basset. Dat' per manus Simonis
 Archi-

Archidiaconi Wellon' & Johan' d' Gray Archidiaconi Almlond apud Windsor 4. die Martii regni nostri anno primo.

Vide Lib' D. 360.
patent' 7 R. 2.

The Bishops have, ever since the said grants of King *Richard* the first, usurped the name of Count of *Sadberge*; the common phrase or stile at the assizes there, is, Justices

Vide Lib' D. 247. of the county Palatine of *Durham* and *Sadberge*, and the like in all procefs and pleadings.

If the words in that grant make *Sadberge* a county of itself, then *Bernard Castle* was no less: The prescription is intire for the county Palatine of *Durham* and *Sadberge*; all prescriptions must be for time immemorial; now the grant of *Sadberge* being extant, as it really is, Will not that defeat the prescription wholly?

Vide inter placita
de Assiz' sub custodia
Tho' Agar dep' camerar' scac'.

The coroners of *Bernard Castle* anciently delivered up their rolls to the King's justices of *Sadberge* before that grant, but they never appeared at *Durham*; these were justices itinerant *ad placita Coron' pro Rege*.

Per inquis' capt'
43 E. 3. & 23 H. 6.
Lib. D. 250.

The family of *Baliol*, for five descents, held and enjoyed *Bernard Castle* of the Crown, *per Baroniam integram*, with *Jura Regalia*, till *Ed' 1.* after which, upon *John Baliol's* defection, it was for a short time granted to the Bishop of *Durham*, in Bishop *Anthony Beck's* time, afterwards seized by the Crown for that Bishop's misbehaviour, and abuse of his power, and granted by King *Ed' 1.* to the Earl of *Warwick*, whose family held it till *Ed' 4.*

Vide Exemplif' 10
H. 4. Ifington, Darlington, Chester.

The Bishop of *Durham* had his proper escheator, and three coroners allowed by *Quo Warranto*, his three coroners are in his own three wards of *Easington*, *Darlington* and *Chester*, whereof *Bernard Castle* was not parcel, till

of late, since the reign of King *Philip* and Queen *Mary*, he hath now his other coroner for *Stockton* ward.

Robert' d' Clitherboe, & Johan' d' Sapy successively exercised the escheatorship at *Bernard Castle*, 9 *Ed. 2.* by grant from the Crown; and afterwards (*viz.*) *Inquisit' capt' apud Castrum Bernard coram Robert' d' Clitherboe escheator Dom' Regis ultra Trent, &c.* returned into the Exchequer; it remained of record in the *Tower of London*. L. D. 254.

11. *Decemb' 43 Eliz'* another inquisition taken at *Bernard Castle*, *coram Thoma d' Musgrave escheator Dom' Regis in Com' Northumbr'*; and another inquisition taken the 25th. *Hen. 6.* by the escheator of the county of *Northumberland*, in the same county, finds *A. . .* seized of *Bernard Castle*, and of the lands, &c. Ibid. 269.

15. *Julii anno 1 Ed' 3.* there is a commission directed from the King, *Rogero d' Mortuo-Mari, custodi Castri Bernardi in Regal' officiis ministrandi*; this was an *amoveas manus* recorded in the *Tower*. L. C. M. fol. 14.

I find in the claims made by *John Baliol* in *Quo Warranto* this, *Johan' Rex Scotiæ habet apud Castrum Bernardi pilloriam, Tumberell', furcas, infangtheif, & liberam warrenam, &c. in omnibus terris suis in libertate Episcopatus Dunelm'*. L. D. 250. 21 E. 1. in placito de Quo Warranto coram Hugone d' Cressingham & sociis suis.

The place of execution of felons is at this day apparent, and the tryals of matters of right were there till the 26 *Hen. 8.* that it was enacted, that all felons should be tryed by the King's commission; since which time the felons there have been tryed at *Durham*, to save the King's charges of justices coming to *Bernard Castle*. L. D. 361.

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The fines of *Bernard Castle*, acknowledged by the Earl of *Warkick*, were before *Justiciar' Domini Regis apud Westm' Octab' Hillar' anno 18 Ed' 3.* whereas the other parts of the county levied fines at *Durham*; in the fine it is said, that this was *per licentiam ipsius Regis coram Johanne Stoner, & sociis suis justiciar' Domini Regis apud Westm'*; and another fine in the same year, before *John Sapy* and his companions, of the same lands found in an inquisition taken 25 *H. 6.*

The Bishop's freeholders owe service to his county courts; but the Lord and freeholders of *Bernard Castle* made neither suit nor service to *Durham* by reason of their tenures; the Lords of *Bernard Castle* held there a hundred or county court of themselves, the jurisdiction thereof extended to all the Lordship; therein be usually awarded replevins, and writs *d' Vetito Namio*, this still continued; so here is exemption from the county, with a concession by which justice is done. And *Bernard Castle*, as to Ecclesiastical jurisdiction, is said to stand in the Bishoprick of *Durham*, but there is no ancient record that it is in *Com' Dunelm'*.

These are things fit to be examined by *Quo Warranto*, *Sadberge esse Com' per se, per nomen Com' ss. d' Sadberge sect' liberorum tent' d' Castro Barnard'*,—*Ec. ad Com' Dunelm' Coron' proposit' apud Barn' Castle, Genford & alibi in terr' inter Tyne & Tese, tent' d' Rege. Catall' felon' d' se deodand', retorn' brevium executionum earum, fines, redemptions, & amerciamenta residentium infra Dominia d' Bernard Castle, Raby, Branspeth, &c. Domin' d' Bernard Castle, Branspeth & Raby est percell' com' Dunelm'.*

Bernard Castle — Bernardi Castrum nunc in warda d' Darlington, sed olim in Wapentag' d' Sadberge, Guido Baliol (Baylol) in Angliam cum Williel' Conquestor' venit, cui quidem Guidoni, Williel' Rufus Rex anno 7 regni sui, pro bono et fideli servitio suo impenso, dedit Baroniam de Bywell in com' Northumb'; eumque Baronem inde fecit; deditque præterea idem Rex Williel' Rufus dicto tempore, Forestas d' Teasdale, et Marwood, simul cum Dominiis de Middleton in Teasdale, et Gainford, cum omnibus eorum Regalitatibus, et immunitatibus, ad inde spectantibus M. S. B. fol' 9. Bernardus Baliol filius fuit primo-genitus antedicti Guidonis. — Baro d' Bywell Castrum apud Bernard construxit, eique nomen suum proprium dedit Castrum Bernardi; creavitque Burghenses in eadem Villa, quibus tales immunitates, et libertates, sicut habuit Richmondia concessit; habuit iste Bernardus exitum alium Bernardum, Qui

Bernardus, (filius Bernardi) Baro d' Bywell, et Dominus d' Bernard Castle, Middleton, et Gainford, dedit, et confirmavit Burghensibus suis d' Bernard Castle, omnes libertates, et immunitates, quas eis pater suus Bernardus antenominatus concessisset, sicut Richmondia habuit.

N. B. Quod unus d' istis Bernardis unus Baronum Ganfridi (Rufi 9) Episc' Dunelm' certo fuit, sed puto ambo fuerunt Barones, Episcopi Dunelm'; Whart' Angl' sacr' 710. Iste ultimo nominatus Bernardus, ex uxore sua Agnete d' Pinkney exitum habuit Hugonem:

Qui Hugo Baliol filius et heres præfati præ et ante nominati Bernardi confirmavit Burghensibus prædictis, omnes suas libertates, sicut antea ejus pater, et avus concessissent, ultraque eis dedit, communiam, pasturam, et omnes communias ex parte australi et boreali, a Rivulo qui venit in Waite-

shaw, curritque in Beckdam, ac a via quæ currit a Bernard Castle, itque erga Stanhope, libere eis, & successoribus suis in perpetuum, (exceptis arboribus, i. e. non habere libertatem succidend' in White-myres, Hawke-stone-banks, seu Bricklay-Carr, sed ad &c.

Now if the Bishop of *Durham* prescribe to his county Palatine and *Jura Regalia* for all the lands between *Tyne* and *Tease*; how comes it that King *William Rufus* granted those great possessions to the *Baliol* family, which held and enjoyed them for many descents, with royal privileges (as the Bishops had under that grant) within that county Palatine, yet wholly independent of the Bishop's *Jura Regalia* or power?

The liberties, privileges, and *Regalia*, enjoyed by the Bishop's of *Durham*, as Count Palatines, were much greater than at present; for King *Hen' 8.* by advice and consent of his parliament, thought fit, by act of parliament enacted in the 27th year of his reign, (chapter 24.) to resume many of them, as too great for a subject, and remitted them to the Crown. A short specimen of these *Regalia* hath been set forth here, to shew the Bishop's overgrown power in those times; and that even those privileges, now remaining in the county Palatine, are too great for a subject; and as little become a Clergyman as a suit of armour wou'd, when he officiates at the Altar; nay it wou'd be even as much out of character as to see a Bishop ride with a *martial air*, accoutered with a *jash* or *military scarf*, and in a *lay-habit*, to a review of the troops in *Hyde-Park*.

It is very remarkable, that the person, who carefully collected, and composed this abridgment of the Roy-

alties of the Bishop of *Durham*, and had collated and examined all the records of the said county Palatine; hath not taken any notice of the Bishops of *Durham* ever claiming or enjoying the mines, within the inclosed copyhold, and ancient leasehold lands of that See; which he certainly would have done, if there had been any evidences or records thereof: The original manuscript in his own hand writing, is ready to be produced to the curious enquirer, to satisfy him that it is intirely, and impartially published, without any alteration; nor could he have any interest in concealing the same, not having a foot of copyhold, or leasehold lands in the county.

I shall now proceed to shew the inconveniencies to which the subjects, in or under this jurisdiction, are liable.

The usual process, before judgment in the court of Common Pleas in this county, for attaching goods, is a *Pone* directed to the sheriff, by which his officers seize the goods of any person within the jurisdiction; if the demand in the writ be laid for 10*l.* or upwards, * tho' no oath is made of the debt being due, yet special bail is required, and the bail to live within the county; and if such special bail be not entered for the defendant, or if such defendant do not surrender his person into prison, at the return of the process (which is generally within sixteen or twenty days) in discharge of his goods, (which in the mean time are kept by the sheriff's officer at the defendant's expence) till the sheriff returns the process, and the schedule, and value of the goods

* Upon reading a late act made in the year 1728, I find oath is required to be made if the demand be 10*l.* or above.

seized

seized; then the Bishop's commissioner certifies them to be forfeited for such default, and consents they shall be assigned and sold for the benefit of the plaintiff, suing out such process; and thereupon process (called an extract) is awarded to the sheriff, who sells the goods, and pays the value received to the plaintiff.

But so cautious was the late sheriff *Spearman*, and so sensible of the severity, or rather the illegality of this proceeding, that he would never sell the goods, or suffer the plaintiff to have any benefit thereof, until he first entered into bond, in a penalty of double the value of the goods, to indemnify him, and his officers, for such seizure or sale, and from all actions or suits to be occasioned thereby: The like of this process is not in *England*, and it really becomes, or is in the nature of an execution; and this not warranted by any known law, but only supported by custom and usage here, and often complained of by many judges of the land in times past; and not even now countenanced by any of the courts or lawyers in *Westminster-Hall*.

By this process any man may be stripped of his goods, he being absent and out of the county; it cannot be therefore held reasonable that the inhabitants of this county, or strangers travelling through it, should alone, of all the King's subjects, labour under the grievance of such process. The late Statute for relief of landlords, is of no benefit to the landlords within this county, where the tenants goods shall be seized by vertue of the said process of *Pone*. That process not being particularly mentioned in the act, only goods taken upon execution may be recovered back by the landlord.

Fines

Fines and recoveries in the common pleas at *Westminster* of lands in this county Palatine are void.

Judgments entered up in the courts of King's bench, or common pleas at *Westminster*, have been esteemed and determined not to affect lands lying within this county, being void as *coram non judice*; because the Count Palatine claims this privilege (*inter alia*) that the King's writs run not here: and that is the general return made by the Bishop to all writs issuing out of these courts before judgment, and hath always been allowed; and error lies against such judgment for the cause assigned: It is a great doubt whether the *Habeas Corpus* act, and many other beneficial acts for the subject, extend to this county Palatine.

No foreign plea is admitted in any of the courts of this Palatine; and the Attornies of this county are obliged to take an oath, not to carry any suits out of the jurisdiction into the courts above, if the cause of suit or action arise here, or the parties or witnesses live within the jurisdiction, or to that effect. Messengers are generally sent, and not attachments, into this county for contempts in chancery, because the sheriff of this county doth not account to his Majesty in his exchequer at *Westminster*; and 'tis well known, that the expence of a messenger, exceeds at least fifty times that of an attachment. No foreign Attornies can practise here, or sue out any writs here, but must employ a sworn Attorney of the courts of this county Palatine.

The court of chancery of this county Palatine was anciently, and still is as a court of exchequer for the Bishop's revenue, to determine matters between him and his tenants,

tenants, and was not considerable, or in tolerable order, (the proceedings being in paper and irregular) till Cardinal *Woolsey's* time, who reformed and improved it; wherein equitable affairs of the subject are determined for this county, as at *Westminster*, by persons of worth and learning, who have filled the bench, by patent for life under the Bishop's great seal. But as 'tis now only held once a year, and that not for more than three or four days, 'tis become dilatory; and the jurisdiction being strait, and not to be enforced out of the limits of the county, no appeals were ever heard of from that court to the House of Lords in parliament: On the contrary the Bishop claims a right to hear and determine all appeals, tho' without any evidence of right; no instances being upon record, save two interlocutory orders made, one in Bishop *Cofin's* time, and the other in the late Lord *Crew's* time, neither of which cases were disputed or judicially settled. This I say put the inhabitants of this county in a worse case, than other his Majesty's subjects. And the present worthy temporal Chancellor, having been dealt with to surrender to a near kinsman of the present Bishop's, and refusing, hath not met with the best treatment. Should his Lordship once have that post to fill up with a dependent of his own, (in the manner he hath all the other offices of law and equity already filled) he would have an intire influence over all the civil officers, and the sole dispensation of law and equity in this county Palatine; and the lives and fortunes of the subjects here would be at his mercy. And Dr. *Sayer* being already Spiritual Chancellor, I dare say he hath assurance to think himself

self qualified * also for the office of temporal Chancellor. How little the subjects are, or will be satisfied with that, many circumstances, and particularly his past conduct as prime Minister of the Bishop, will discover.

* His admirable speech in the late trial of a noble Peer, hath given us a specimen of his abilities.

One *Henry Young*, having a title to a colliery by a lease from the Bishop, and some disputes arising between him and one *Mr. Hodgson*, who had a neighbouring colliery, the charges run high; and he not able to carry on the suit, admits *Dr. Sayer* as a partner in the colliery, to have his aid in carrying on the suits; who upon a late trial, at the last *Durham* assizes, sat upon the bench next to the late Judge *Cowper*, and in a most insolent manner brow-beat, and insulted *Hodgson's* counsel and witnesses, which gave a general distaste, not only to those present in court, but to all who heard of his behaviour. — And now I'm told that *Young* and *Hodgson* are agreed, and blame *Dr. Sayer* as the sole occasion and instrument of their difference.

And really his brother *Mr. Sayer*, a Prebendary of the Church of *Durham*, (preferred by this Bishop) takes upon him to imitate the *Doctor*; for an eminent attorney in *Durham*, having prosecuted a cause for his client, against one *Hafwell* a quaker, tenant to the Prebendary, he thought fit to bully the attorney, and told him, he wondered at his assurance to bring an action against his tenants; adding, he would spend half a year's rent on his tenant's behalf; but that attorney being a Gentleman of spirit and good sense, was not to be intimidated by his impotent threats.

SOON after the Bishop of *Durham's* accession to that See, a Bill was brought into Parliament, which the

Bishop and his friends stickled very much to promote A copy of which Bill, and some proceedings therein, are thought fit to be here inserted :

The Bill depending in Parliament for enabling Bishops and others to make leases of mines.

To which are added, some few clauses intended to be offered to the Committee, which, by way of distinction, are printed with comma's before the lines, together with some notes or remarks thereon.

An Act to enable Archbishops, Bishops, Colleges, Deans and Chapters, Hospitals, Parsons, Vicars and others, having spiritual promotions, to make leases of their mines, which have not been accustomedly letten, not exceeding the term of one and twenty years, without taking any fines upon the granting or renewing the same.

WHereas there are diverse mines of copper, tin, lead, iron, coals, and other ores, and minerals, in the honours, manors, lands, wastes, and commons, parcels of the possessions of the Archbishopricks, Bishopricks, Colleges, cathedral Churches, Hospitals, Parsonages, Vicariges, and other spiritual promotions, within that part of *Great Britain* called *England*, and the dominion of *Wales*, or united, appertaining or belonging to some of them, which not having been most commonly letten, the said Archbishops, Bishops, Colleges, Deans
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and Chapters, Hospitals, Parsons, Vicars, and others having spiritual promotions, are therefore by law disabled ^(*) to make such leases thereof as may be an encouragement for many persons to search for, or work the same; by reason whereof the mines lie unwrought, to the great loss and prejudice not only of the Archbishops, Bishops, and other the ecclesiastical, spiritual and collegiate persons aforesaid, and their successors, but of the Kingdom in general. — For remedy whereof,

Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, that from and after the 25th day of *March*, in the year of our Lord 1723. it shall and may be lawful, to and for every the Archbishops, Bishops, Masters and Fellows of any College, Deans and Chapters of any cathedral or collegiate Churches, Masters and Guardians, and Brethren of any Hospitals, Parsons, Vicars, and others having any spiritual or ecclesiastical living or promotion, within that part of *Great Britain* called *England*, or the dominion of *Wales*, their and every of their successors, by writing indented under seal, to demise, lease or grant all and all manner of mines of copper, lead, tin, iron, coals, and other ores and minerals, being parcels of the possessions of such Archbishopricks, Bishopricks, College, cathedral Church, Hospital, Parsonage, Vicarage, or other spiri-

(*) Note, That the recital as to those several ecclesiastical persons being by law disabled to make leases of those mines, is not true; for that they all of them have power at present to make such leases, either of themselves alone, or otherwise, with the confirmation of such as have right to confirm them; so that it's conceived that there is no manner of occasion for this Bill.

tual promotion, or united or any wise appertaining or belonging to any of the same, (b) “ not being Copyholds “ or ancient Leaseholds, part or parcel of the same premises,” (c) to any person or persons, bodies politick or corporate, for any term or number of years, not exceeding the term of one and twenty years (d) in possession, and not in reversion, or by way of future interest, with all convenient and proper liberties and powers, for searching, digging, southing, for getting, winning, or working the same, and carrying away all the produce thereof, under such rents, and reservations, payable yearly during the said terms, to the lessors, and their successors, as to the said lessors respectively shall seem meet and convenient; (e) So as nothing herein contained, shall be construed to give any liberty to any Archbishop, or Bishop, or other ecclesiastical persons, to sell, cut down, or dispose of any of the wood or timber belonging to his or their Bishop-

(b) It's hoped this honourable House will, upon mature consideration of the ends and real designs of this Bill, think fit to throw it out; but in case the House should incline to alter the Bill in such a manner, as that some of those ill consequences, which are apprehended from it, may be in some measure prevented; then it is humbly submitted to the judgment of the Committee, whether this Clause, which is here inserted, as to Copyholds and ancient Leaseholds, will not be very proper for preserving the rights of the owners or tenants of the said grounds.

(c) Note, That the Lord Bishop of *Durham*, or such other Bishops, as are most commonly concerned in mines, have the less reason to object against this Clause relating to Copyholds and ancient Leaseholds; for that it's conceived they will have advantage enough by working the mines within the wastes of their several manors, which in the Bishoprick of *Durham* are very large, and where the Bishop can have no just occasion to injure his leasehold or copyhold tenants, by endeavouring to destroy their inclosed grounds.

(d) Note, That the terms of 21 years, and three lives, are the terms which have been settled and established by the statutes of the 32 *Hen* 8. and 1 *Eliz*. and several other statutes, but for some private purposes, are endeavoured to be changed and broke thro' by this Bill.

(e) Note, That this restraining Clause, as to the cutting of wood and timber, is conceived to be necessary, because there have been former attempts made by some Bishops of *Durham*, to destroy the wood and timber in that Bishoprick, under the pretence of its being of use to them in the working of their coal mines, and other mines of lead and iron.

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ricks, or other ecclesiastical livings or promotions, in any other manner than they or any of them were enabled by law to do, before the making this Act.

“ (f) And so as nothing in this Act shall be construed,
 “ to empower any of the said Archbishops, or Bishops,
 “ or other ecclesiastical persons, to lay waggon-ways,
 “ or to lay or make any other ways or passages, in,
 “ through, or over any of the grounds belonging to
 “ other persons, save where they had right to make such
 “ ways before the time of making this Act.

And so as no sum or sums of money, or other matter or thing whatsoever, be taken directly or indirectly, by way of fine or income, for, or in respect of the making or renewing of any such demise, lease or grant. “ (g) And
 “ so as no leases to be granted by the said Archbishops
 “ or Bishops by vertue of this Act shall be accounted

(f) Note, That this restraining Clause, as to laying of waggon-ways, is all conceiv'd to be necessary in this case, because it is apprehended that a power is endeavour'd to be gained by this Bill, of laying waggon-ways, or other ways, over the inclosed grounds, at least of the said leasehold and copyhold tenants, and of gaining a power likewise to grant leases of such way-leaves for some particular advantages to be made of the same: In order to which, it is conceived, exceptions have been attempted to be inserted upon the renewal of leases from the Bishop of *Durham*, wherein the way-leaves have been specially reserved to his Lordship, contrary to the form and custom in the renewal of former leases, and which ought not to be varied, as hath been adjudged in many cases, without the consent and confirmation of the Chapter.

(g) Note, That the Chapters confirmation of Bishops leases, is not more requisite or necessary in any case whatever for the good and benefit of the successor, than it is in the case of leases of mines, especially of mines that were never open or leased before; because, in that case, there is a new rent to be created and established, which is the only provision that the successors have to depend on, during the continuance of the lease; and if that should be left to the present Bishop alone, he may grant a lease of the richest of mines, to any one in trust for himself, or any other, reserving a pepper-corn to his successors; besides that, great care ought to be taken for the sake of the successors, that proper covenants and provisions be inserted in all leases of mines, for the fair working of them, and to prevent the ruin and destruction thereof, upon the account of any hasty advantages proposed to be made by the present Bishop or his lessees.

“ valid,

“ valid, unless confirmed by their respective Deans and
 “ Chapters.

And so as every such demise, lease or grant to be made by any Parson or Vicar, ^(h) or any of their successors, be confirmed by their respective Patrons and Ordinarys, “ *Provided* ⁽ⁱ⁾ always, nevertheless, that it shall and may “ be lawful for any of the said Archbishops and Bishops “ or other ecclesiastical persons, to grant a licence, or “ licences, from time to time, to any such leaseholder, or “ copyholder, to open and dig any mines or quarries, “ in any such copyhold or leasehold premises as are held “ by him under such contracts and agreements, as at “ any time hereafter shall be made or agreed upon, by “ any such Archbishops, or Bishops, or other ecclesiastical “ persons, and their leaseholders and copyholders, to be “ confirmed by the Dean and Chapter, any thing in this Act “ contained to the contrary in any wise notwithstanding.

Provided ^(k) always that this Act shall not extend to any mines belonging to any such Archbishoprick, Bishoprick, College, cathedral Church, Hospital, Parsonage, Vicarage, or other spiritual promotion, which have

^(h) Note, That is admitted by the Bill, that it is necessary and proper, that all leases to be made of such mines, by Parsons and Vicars, ought to be confirmed by their respective Patrons and Ordinarys.

⁽ⁱ⁾ Note, that this clause may be both an encouragement to all leasehold and copyhold tenants, to make tryals and discoveries of mines within their inclosures, and to permit the same to be opened and wrought, which they are not obliged to do at present; and it may also very much tend, not only to the benefit of such Bishops, or other persons, as are to grant licences for the working thereof, but to the advantage of the publick likewise, which is so much pretended to by the now Bill.

^(k) Note. As to the proviso inserted in this Bill, that it shall not extend to leases formerly granted; it is apprehended, that the design of it is, that where any such leases have been granted by the late Bishop of *Durham*, without the Chapter, that the present Bishop may avoid them as illegally granted, and yet that he may grant new leases thereof, without his Chapter, by virtue of this Act, and make them all chargeable with fines, notwithstanding the provision in this Bill.

been most commonly letten by the space of twenty years next before the making this Act; but that all such mines may be granted, demised and leased, as they lawfully might have been, in case this Act had never been made, any thing herein before contained to the contrary hereof in any wise notwithstanding.

And be it further enacted, that this Act shall be taken and allowed in all courts, within this Kingdom, as a publick Act, saving and reserving to the King's most excellent Majesty, his heirs and successors, and to all and every other person and persons, bodies politick and corporate, their heirs, successors, executors, administrators and assigns, (other than and except the said Archbishops, Bishops, Masters and Fellows of Colleges, Deans and Chapters of cathedral and collegiate Churches, Masters and Guardians, and Brethren of Hospitals, Parsons, Vicars, and others having spiritual and ecclesiastical livings and promotions, and their respective successors; all such right, title, interest, claim or demand whatsoever, as they or any of them might, could, or ought to have had, claimed, held or enjoyed, in case this Act had never been made, any thing herein before contained to the contrary thereof in any wise notwithstanding.

Note, It does not appear, that any of those ecclesiastical persons mention'd in this Bill, can have any advantage at all by it, save only some Bishops, who may be desirous to dispose of the mines for their own advantage, without the controul of any of their Chapters; nor does it appear, that any, save the Bishops concerned in the said mines, have any way solicited the passing of this Bill. Whilst

Whilst the Bill depended in the House of Lords, it was not any way made known to those who are chiefly concerned in it; and if the Chapter of *Durham* had not had reason to believe that their right of confirmation had been expressly saved, it would hardly have passed the Lord's House without opposition.

And as the Bill, as it now stands, appears to be calculated for the serving of private ends only, it's hoped the House, for that reason, amongst many others, will reject it, and give leave to bring in a new Bill for the better discovery, opening and working of all mines as are not yet opened, and other purposes, which may be more for the good of the publick.

To the honourable the Knts. Commissioners and Shires, Citizens and Burgeses, in Parliament assembled,

The humble petition of diverse leasehold and copyhold Tenants of and within the bishoprick of Durham.

Sheweth,

THAT a Bill having lately passed the honourable House of Lords, entitled, an Act to enable Archbishops, Bishops, Colleges, Deans and Chapters, Hospitals, Parsons, Vicars, and others having spiritual promotions, to make leases of their mines which have not been accustomedly letten, not exceeding the term of one and twenty years, and without taking any fines for granting

or renewing the same, your petitioners had not any notice thereof, 'till very lately, and till after the said Bill was sent down from the Lords to this honourable House.

That upon perusal and consideration of the said Bill, your petitioners do humbly conceive and are advised, that in case the said Bill should pass into a law, your petitioners undoubted rights and properties will be greatly prejudiced, if not utterly destroyed and taken away.

Wherefore your petitioners humbly pray,
that they may be heard by their Counsel
against the said Bill;

And your petitioners shall pray, &c.

*The Case of the Dean and Chapter of Durham,
upon the Bill depending in Parliament for
enabling Arch-Bishops, Bishops, and others,
to grant leases of mines not accustomably
letten.*

DEANS and Chapters have been and are esteemed as the counsel of Arch-Bishops and Bishops; and amongst other good purposes, to consent to every grant, &c. which they shall make to bind Successors; it not being reasonable to repose so great a charge or confidence in any sole person, or to give power to any one person only, to prejudice his Successors, *Coke 3. Report*, Dean and Chapter of *Norwich's* case. Deans and Chapters, as is well known, did accordingly constantly confirm all

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such

such leases, before the enabling statute was made 32 *Hen.* 8. and had an undoubted right to do so, by the common law: And if that enabling statute, or the private statute 1 *Eliz.* and other the restraining statutes made in her reign, for abridging Arch-Bishops and Bishops, and other ecclesiastical persons, from making long leases, have not varied or taken away such the ancient right of Deans and Chapters, which they had by the common law, and constant immemorial usage before that statute, such right of confirmations must still, and does now belong unto them.

It must be admitted, that by the enabling statute 32 *Hen.* 8. in all leases made for three lives, or twenty one years in pursuance thereof, all the restrictions and necessary requisites thereby enacted, must be punctually observed, or such leases will not be good against Successors, unless confirmed by Deans and Chapters; and such leases as are good by that statute, must be of lands or hereditaments, not in the hands of any farmer, by way of old leases; unless such old leases were expired or surrendered in a year after the new lease made; and it is expressly thereby declared, that such statute shall not extend to leases of reversions, nor to any hereditaments, not most commonly letten to farm, or occupied by farmers for twenty years before the making thereof, nor to any lease to be made, without impeachment of waste; nor to any leases made for above twenty one years, or three lives from the making; and upon which there be reserved yearly to the lessors, their Heirs and Successors, according to their respective estates, so much yearly farm or rent, or more, as had been most accustomably yielded and paid, within

twenty years before such leases made; and other restrictions are contained in that Act, see 32 *Hen' 8. c. 27.*

The private Statute 1 *Eliz'*, or subsequent Statutes in her reign, make no alteration in any of the restrictions which are in the Statute of the 32 *Hen' 8.* and it is conceived those Statutes only were made for preventing the making long leases with confirmations, as were then accustomed to be done, to the great damage and injury of the Successors, but no way to alter or take away the right which Deans and Chapters had to confirm leases, made by Arch-Bishops, and Bishops, of mines, or any other of the inheritances of the Church, not comprised in those Statutes; for the farther illustration of which undoubted right of Deans and Chapters, see Bishop *Gibson's Codex Juris* p. 781. wherein are the following words.

“ Confirmation is only necessary to the leases of sole corporations, as Bishops, &c. with Parsons, and Vicars, so it was, and so it still remains at common law; by which corporations aggregate of many, might of themselves make any grant of, or out of the possessions which they held in common; but the law did not think fit to trust a single person, or sole corporation, with the disposition of estates held in right of the Church; and therefore by way of restraint appointed the assent and confirmation of some others, without which their grants should not be valid against the Successor; accordingly all leases of Arch-Bishops and Bishops, to bind their Successors, were to be confirmed by the Dean and Chapter; all leases of Arch-Deacons, Prebendaries, and the like, by Bishop, Dean and Chapter, with some exceptions in case of pa-

tronage, which are not now material; and all leases of Parsons, and Vicars, by patron and ordinary."

But all these, except Parsons and Vicars, were inabled by 32 *Hen'* 8. to let leases for one and twenty years, or three lives without confirmation, *Provided*, that in such leases the conditions and limitations of the said Act, as to the expiration of the old lease, the commencement of the new, the reservation of the rent, &c. were punctually observed; but if not, confirmation remained necessary as before, in order to bind the Successor; and with confirmation long leases of sole corporations continued to be good against the Successor, as they had been at common law.

From all which, as well as from the bill itself now before the House, it is plain that the leases which are thereby intended to be made of mines, are not, nor can be included in the inabling Act of 32 *Hen'* 8. or of the subsequent Statutes of the 1, 13, and 18 of Queen *Eliz'*; because mines yet to be discovered, cannot be hereditaments most commonly letten, or occupied by farmers for twenty years; nor can leases be made of mines without impeachment of waste, because defacing and destroying the surface, and scooping out and carrying away the bowels of the inheritance, must occasion the committing waste; nor can it be supposed that a rent can be reserved as accustomably paid for twenty years, of a mine which has never yet been letten; and if so, Deans and Chapters must have the same right now as they had at the common law before the Statutes abovementioned were made, which it must be admitted have not as yet destroyed, or

taken away their right of confirmations of leases of mines which they had, and now have by common law.

Leases made by Parsons and Vicars are excepted out of the Statute of 32 *Hen'* 8. and are not good unless confirmed by the patron and ordinary; and the present bill takes the same care of patron and ordinary as that Statute did; and it is hoped this honourable House will take the same care to preserve the undoubted rights of Deans and Chapters, there being no good reason to be assigned, why the rights of those excepted out of the inabling Statute of the 32 *Hen'* 8. should be saved; and yet at the same time, by the same Bill, the rights of the persons not comprised therein stand (in point of justice) at least on the same foot as to the rights and properties.

It must be admitted, that the Bill gives the same power to Deans and Chapters as to mines in their own proper estates, which it doth to Arch-Bishops and Bishops; and if Deans and Chapters had no right but as lessors, such right ought to be excepted, as it is by the saving Clause; but since they have another plain right by the common law and immemorial usage, namely, to confirm the leases of mines let by Arch-Bishops and Bishops, no just reason can be assigned to take away and destroy such their right by a new law, which the petitioners, the Dean and Chapter of *Durham*, do neither request, nor want, nor conceive to be of any benefit or advantage to them.

For which, and other reasons, they humbly hope the Bill shall be rejected, or so amended, as effectually to save their rights, as well with respect to confirmations, as all other their own just rights; and
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likewise to preserve the inheritance of the Church for the benefit of the Successors of the present Arch-Bishops and Bishops, who, as the petitioners conceive, were to be assisted by the Deans and Chapters, to consent to every grant, &c. to be made by such Arch-Bishops and Bishops; by which restraint all such inconveniencies as might arise by reposing so great a trust in a single person, or by giving him power to prejudice his succession, might be, and would, as it hitherto hath been, effectually prevented.

Observations on the ingrossed Bill depending in the House of Commons intituled, An Act to inable Arch-Bishops, Bishops, &c. to make leases of mines.

1. **T**HIS Bill will inable Arch-Bishops, and other persons mentioned in the title thereof, their lessees or agents, to search for, and work mines any where within the inclosed grounds (gardens and avenues to houses not excepted) of all their leasehold and copyhold tenants, and therein to enter, break the soil, dig, cut, lay the earth, make ways, demand wayleaves, and otherwise to act at their will and pleasure, without any restraint or limitation, and without being obliged to make any satisfaction for the same to their tenants, who shall be injured thereby.

2. By this Bill, as it now stands, the Arch-Bishops, and other persons aforesaid, will have power to grant leases of mines to *strangers* without any regard or preference to their

their ancient tenants, without whose consent they never could give leave to work the said mines; and whose lands when this Act passes will be subject to every wild *Undertaker* to tear up at pleasure.

3. This Bill deprives the Dean and Chapter of their power to confirm leases of mines which they have enjoyed time out of mind, and which was always esteemed a proper check to prevent any damage to the possessions of that See, and wrong to the Successor, or oppression to their neighbours.

4. By this Act the Arch-Bishops, and other persons aforesaid, will have power to grant leases to any of their *family*, or *favourites*, at any inconsiderable rent, for the term of twenty one years; and such lessees may assign their interest at higher rents to the prejudice of the Successor, who will only have that inconsiderable reserved rent for the residue of the term when he enters.

5. All Bishops leases, as the law now stands, must be made for twenty one years, or three lives; but by this intended law they may make them for any term, long or short, within the compass of twenty one years, which may one day serve for a precedent for altering the leases of land; and these short leases may consequently tempt the lessees to work their mines irregularly, and unfairly, to make the best of their short term; and perhaps to drown the treasure they are forced to leave behind them, which has not seldom happened; and which will still tend to the greater damage of the premises leased, than it would if the same were leased for twenty one years.

By the allegations of this Bill it is asserted, that it is a loss and prejudice not only to the persons above mentioned,

tioned, but to the kingdom in general, that any mines should be unwrought.

Granting this to be true, and that the opening of these mines will be for the public benefit ; Will not the benefit of the public be much the greater, if these mines are opened by the several owners of the lands, who may be very numerous, and which may therefore tend to enrich the county in general, than if they should be opened by any one Bishop, or a few of his *favourites*, or *dependants*, who, for *private interest*, may monopolize the same ? And if a reasonable share of the mines, or the value of them, be reserved to the Bishop and his Successors, it is conceived to be as much as can in this case be reasonably desired ; but especially by such as may be presumed to be already very well provided for.

Upon the whole it is hoped, that this honourable House, which has been very tender and cautious of infringing private property on any account, will either pass this Bill with proper provisions for securing of those private properties that may be injured by it, or else will intirely reject it.

Some other observations upon the said intended Bill, drawn by another hand, on behalf of the copyhold and leasehold tenants.

1. **T**HAT this Act will give power to the lessees or agents of all Bishops, or other ecclesiastical persons, to work and search for mines within the inclosed grounds of all their copyhold and leasehold tenants, altho'

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no mines were ever before opened or discovered therein, and altho' they have at present no right or power, either to open and work, or to grant any lease of the said mines.

2. By this Act (as contrived) they will have power to grant leases to any strangers, without giving any preference or election to such copyhold or leasehold tenants, as are in the possession of the said grounds, and without giving them the least recompence or satisfaction for the damage done, either by working the said mines, where any such happen to be discovered, or for working and searching under pretence of finding mines, where perhaps no mines are, nor ever were.

3. By this Act (as conceived) a power may be claimed to grant wayleaves, lay waggon-ways, and use other liberties within the inclosed grounds of all such copyhold and leasehold tenants, and not only for the lading and carriage of such coals as shall be wrought within the said tenements, but for the carriage of coals from other places; and without making satisfaction for any damage done therein, altho' they have at present no manner of right to any such liberties, nor any power to grant the same.

4. It's conceived that the granting of leases by Bishops (as contrived by this Bill) without confirmation of the Dean and Chapter, may be very prejudicial to the interest of their Successors; for that it may be in the power of all Bishops (as this Act is now penned) to grant leases to some of their family, or perhaps in trust for themselves, under very small and inconsiderable rents, and that the persons to whom granted may either keep them in their

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own hands for the benefit of such Bishops, or their families, or may grant, or assign them over to other persons, under great rent, or for great and considerable advantages ; and the Successors shall get nothing at last but such small rent as was originally received upon the first lease granted thereof.

5. A power is given by this intended Act to grant these leases for any term, or number of years, not exceeding twenty one years, by the Statute of 1 *Eliz'* c. 19. all grants made by Bishops, &c. other than for twenty one years, or three lives, are declared to be void ; since the making of which Statute, that manner of leasing for twenty one years, or three lives, has been settled and established as the most just and proper standard, whereby the lessees and tenants of the Church may have a just and reasonable encouragement to be at the charge of making improvements ; and upon leases for those terms proper reservations may also be made for the benefit of the Successor ; whereas by this Act a new method of leasing is endeavoured to be introduced for the like innovation in other cases, and for rendring the interest of leasehold tenants very precarious.

6. It may be farther observed upon this Bill, that it will most particularly affect the Bishoprick of *Durham*, where there are great numbers both of leasehold and copyhold tenants, who will be much concerned in interest ; and it is apparent enough, that the said Bill, as at present contrived, may very much tend to raise the present revenues of the said Bishoprick by such means, and must sink them for the future.

The Bill suggests, that it is calculated for advancing
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the good of the public, and for preventing the taking fines either directly, or indirectly, upon the granting leases and renewals of them, which seems to be admitted by the Bill as being prejudicial to the Successors; yet it may be observed, that in the *contrivance* of this Bill, there have been other things in *view* besides either the benefit of the public, or of the Successor; that there are many things very *artfully couched* under general terms, and in the manner of penning the said Bill, which may very much affect the rights of the said leasehold and copyhold tenants, as well as the right of such persons as claim mines under former leases granted thereof; the notice which is taken of these former leases will likewise admit of consideration; and it is conceived upon the whole, that in order to render this Bill of more general advantage, there ought to be some other provisions in it.

I ALLOW these farther objections to the Bill are, in a great measure, the same as those contained in the notes upon the Bill, and I would willingly, for that reason, have forborn inserting the latter; but the Gentleman who favoured me with them, was of a different opinion, and desired they might be added in his own words; therefore I hope I shall be excused for adding what I think may be esteemed a repetition.

This attempt alarmed the whole nation, and a vigorous opposition was made to it, and particularly by the then Dean and Chapter of *Durham*, and the copyholders and leaseholders of this county; for it appeared to them, that that Bill was calculated for the Bishop of *Durham* and his family only, and not for his Successors; and to

deprive the copyholders, and ancient leaseholders, of the mines within their inclosed grounds, which the Bishops of *Durham* have of late claimed; altho' there is no exceptions or reservations of such mines, in the grants or surrenders of their copyholds, or in the leases of their leasehold lands; and it is to be noted, that their copyholds are descendable estates of inheritance to them and their heirs, and such claims cannot be supported by prescriptions.

And upon a late tryal between the late Bishop's lessee (Dr. *Finney*) and Mr. *Sutton*, it did not appear, that he could maintain any evidence of a prescription, exceeding thirty years, and that only by one lease, granted of some mines or quarries, within the manor of *Easington*, to his nephew the honourable *Charles Montague*, Esq; deceased, and which proved of very little value to him; and altho' the Bishop's lessee obtained a verdict, it was esteemed to be against evidence, and the Judge so dissatisfied with it, that he was willing to grant a new tryal; but Mr. *Sutton* was timorous, and said, that the copyholders had deserted him, and would not bear a share of the expence as they promised; therefore he was willing to submit to that verdict: And it is well known that the Foreman of that jury, Mr. *Wardell*, was too much influenced in that verdict, by his kinsman Mr. *Burrell*; and some of the jury said they would rather starve than agree to that verdict; and he hath since repented of it.

By this bold step *one family* would have ingrossed (as much as in them lay) mines of immense value to themselves, without any regard either to the Bishop's Successors, or to the tenants and their posterity: The Bill ap-

appeared to be of very ill consequence, since the Bishop of *Durham*, who is mostly concerned in coal mines, had the less reason to attempt the mines within his tenants inclosed copyholds and ancient leaseholds; for that he hath advantage enough by mines within many of the wastes of his several manors within the Bishoprick of *Durham*, which are very large, and where the Bishop and his lessees may work mines for ages to come; he cannot therefore have any reason to injure the copyhold or ancient leasehold tenants, by endeavouring to destroy their inclosed grounds.

Sir *John Eden*, being then one of the Representatives for the County of *Durham*, strenuously opposed this Bill; tho' it must not be forgot, that his fellow member, Mr. *Hedworth*, refused to give the tenants any assistance, or to join in the petition against it; however, the oppositions against it were held so reasonable, that the Bill was dropt or withdrawn, and did not pass. But many of the old Prebendaries of *Durham* soon after dying, the Bishop had the opportunity of preferring many of his friends in their places; he thereby hath a majority in the Chapter, to confirm such leases as he thinks fit to grant. The inconveniences of the Bishop's power, by that majority, may be humbly represented by the following comparison, which I hope will give no offence.

The Parliament of *Great Britain* is a barrier to the liberty of the people, and a check upon the prerogative of the Crown, and a security against any arbitrary or absolute power. The Lords have an inheritance in their Peerage; the Commons are elected by the suffrage of the people, to the end, that they may have no immediate depen-

dependence upon the Crown, but to vote freely, and indifferently, for the united good of the Crown and subjects. Now if it should so happen, (as I hope it never will) that any Prince possessing the Crown, should gain a majority in the Parliament, by pensions, places, or other means, to influence such majority to comply with any absolute measures, whereby he should design to make himself arbitrary, as has been unfortunately instanced in the case of a neighbouring kingdom; where then is the barrier or security of the people's liberties? and what is there left to preserve the people's rights, but the good principles of such a Prince? for they will then be entirely dependent upon his will, and nothing left them, but barely the name of Parliament. *

* *Rapin* in his *Hist. of England*, vol. 5. p. 71. says, That tho' King *Hen. 4.* had caused King *Richard 2.* to be deposed for aiming at arbitrary power, contrary to the laws, yet he himself made some steps, which plainly shewed, he would not have been sorry to have had it in his power to govern with an absolute authority; this was chiefly manifest in his elections of members of Parliament; by the direction of the Court, certain artifices were practised, as rendered the freedom of voting of no effect, seeing the sheriffs took the liberty to return such representatives as had not a majority of votes; this is a thing of so fatal a consequence, that one may venture to affirm, The liberty of the *English* will no longer have a being, than whilst the privilege of freely electing representatives in Parliament stands inviolated: If once the Sovereign comes to chuse what representatives he pleases, the bounds of royal authority will, in the end, be so vastly enlarged, that nothing but the mere shadow of liberty will remain; of this we have seen a remarkable instance in the reign of *Richard 2.* and it may be further affirmed, that all the Kings of *England*, which have enjoyed a more absolute power than the rest, got it by this way; I mean, by procuring such persons to be elected, as were devoted to them: When a Parliament is made up of such members, it is no longer the King that is charged with the encroachments made upon the people's liberty, but it is the nation it self that voluntarily runs into slavery; and if afterwards they are desirous to throw off their chains, there is no remedy to be had, but by force of arms, and hence (by the way) has sprung the greatest part of the Civil Wars which have been so often kindled in *England*. — The Parliament which met in *Jan. anno 1410.* taking into consideration the consequence of the steps the King had made, in order to over-rule the elections, believing their redressing that abuse required their first care; at the beginning of the Session they presented a Bill to the King, whereby it was enacted, that the sheriffs who should be guilty of making false returns, should be fined 100*l.* sterling for every such offence: The King would fain have shifted off this Act, but as he could not do it, without laying himself too open, and besides, having a design to demand a subsidy, he gave the royal assent to it. (These are the very words of *Rapin*.)

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Deans and Chapters, in like manner, are guardians of the Church, and trustees to preserve the rights of the Church in succession: And the donations of the Prebends of the Church of *Durham*, by the wisdom of King *Henry 8.* foundation, were reserved in the Crown, that they should be his counsel and trustees for the Church, and a check upon any arbitrary designs of the Bishop, on whom they ought not to have any dependence: But Bishop *Tunstall* being a favourite of King *Philip* and Queen *Mary*, prevailed upon these Princes to part with that flower of the Crown, and grant the donation of those Prebends to the Bishop and his Successors, by which means, they may have it in their power to prefer their own *creatures* to the said Prebends, and thereby to gain a majority, which removes or takes off the check upon the Bishop, and avoids the trust; and totally evades that wise provision in the first institution of King *Henry 8.*

We have, since the Restoration, many flagrant instances of this great inconvenience here, which, if occasion be, shall be enumerated; but no greater instance can be given, of the Bishop's great power, than at this time, when he hath a majority in the Chapter, and many rich livings in his gift, to gratify the Prebendaries. The first use he made of that power, was to grant a lease to Dr. *Sayer*, of all the coal mines within the inclosed copyholds of Sir *John Eden* and others, at *West-Aukland*; who afterwards demised the same to Sir *John Eden*, under the yearly rent of 100 *l.* which Sir *John* unhappily submitted to, but was afterwards heartily sorry for making that agreement. Since Sir *John's* death, Dr. *Sayer* hath tried both rough and smooth means to prevail with
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the widow Lady *Eden* to surrender up that lease, thinking to make greater advantage to himself by working the said mines.

Then the Bishop granted a lease of the coal mines in the manor of *Houghton le Spring*, and *Newbottle*, to his son, and to his son in law Dr. *Sayer*, to his steward Mr. *Stonebrower*, and his son in law Mr. *Fawcett*, or to some persons in trust for them: And I am well assured, that the Bishop hath granted to his son in law Dr. *Sayer* all the mines, as well in all the wastes and commons, as in the inclosed copyhold and ancient leasehold grounds, in the large parish of *Chester le Street*, and *Houghton le Spring*, where most of the coal mines lye, and elsewhere in this county, not heretofore granted by his Predecessors: He hath thereby made a clear stage, and none of his Successors are like to have any benefit thereby, but only the small reserved rents, and the fines upon renewals: The tenants are likewise stript of any expectations of the mines in their own grounds, if this project should succeed; and what is there to prevent it, but the union of the tenants to apply for relief to the justice of the Legislature?

And Dr. *Sayer* (not yet satisfied) is endeavouring to avoid a lease granted by this present Bishop, of another great Colliery (and to obtain it for himself) under pretence, that the present lessee is only trustee for a *Roman Catholick Gentleman*; but I hope he will be disappointed in this vile project.

Dr. *Sayer* has opened the scene, by what will appear in the sequel. For on or about the 7th of *September*, 1723. Dr. *Sayer* meeting with *Gilbert Spearman*, Esq; (who

(who had joined in the petition against the Bill) he told him, he wondered he did not ask for a lease of the mines of his copyholds in *Tanfield Western-Leigh*, and that if he could do him any service therein, he would be willing to oblige him, and would obtain him such lease on moderate terms. Mr. *Spearman* replied, that he did not know that there was any coal in the ground, and that if there was, it was not probable that it would be wrought in many years, there being no wayleave to it, and he having a great freehold which must be first wrought; but to prevent any attempts or abuse in the grounds by others, he agreed to give a moderate fine for such lease, for peace sake. The Doctor set 50 *l.* as a fine, for which Mr. *Spearman* acknowledged the Doctor's civility in making him the offer, and (for peace sake) agreed to pay him or the Bishop any sum, not exceeding 50 *l.* for such lease, and a small annual rent; the Doctor undertook to obtain it for him, and took a note of the terms, and of the boundaries of his copyhold lands, together with a brief or abstract of some leases of mines granted in Bishop *Morton's* and Bishop *Cofins's* time, which were called fishing leases, and not very successful to the lessees.

A short time after, the Bishop and Dr. *Sayer* returned to *London*, without taking further notice of the lease to Mr. *Spearman*; and Mr. *Spearman* having occasion about a month after, to go to *London*, a neighbour of his came to visit him, and told him, that he had been at the Bishop's Castle at the *Audit*, where it was jested by the Stewards, that Mr. *Spearman* had been deceived, and that the Bishop had granted a lease of Mr. *Spearman's* mines in his copyhold, to Dr. *Sayer* himself; at which Mr. *Spear-*

man being much surprized, went the next morning to inspect the Auditor's books, which he conceived he had a right to do, being a tenant of the Bishop's, but was refused such inspection; and it was further told, that it was the Bishop's order that none should inspect those Books.

Mr. *Spearman*, upon his arriving at *London*, was advised not to go himself to the Bishop, but to get some friend to apply to the Bishop and Dr. *Sayer* about such lease; and accordingly he prevailed on a friend to wait upon the Bishop about it, who received him civilly; and both the Bishop and his Lady assured him, there was no such lease granted to Dr. *Sayer*, but that he would treat with Mr. *Spearman* when he came into the country, and grant him such lease to his satisfaction. Mr. *Spearman* was thereupon satisfied; but at his return into the country, he was informed, by one of the Bishop's *prime Officers*, that such lease was actually granted to Dr. *Sayer*; he thereupon gave that account to his friend at *London*, who again waited on the Bishop, who still persisted in his denial, that he never granted any such lease to Dr. *Sayer*, but would, when he returned into the country, treat with Mr. *Spearman*, and grant him such lease; this fact can be proved.

However, against the following election, Mr. *Hedworth* applied to Mr. *Spearman* for his vote and interest in the election, and offered him a handsome retainer to be of counsel for him, which retainer Mr. *Spearman* refused, but promised to serve him and Mr. *Talbot* in their elections, as he had always done; and only desired Mr. *Hedworth's* interest with the Bishop, when he came into the country, to obtain for him such lease; which he
promised

promised to use his endeavours to obtain ; only adding, it would not be decent to press the Bishop before the election ; Mr. *Spearman* thereupon acquiesced, not suspecting any chicane in the matter.

After the election, Mr. *Hedworth* told Mr. *Spearman* he came on purpose to *Durham* to wait on the Bishop about his affair, and would bring him the Bishop's answer after dinner ; when he accordingly met Mr. *Spearman*, and told him, he had got an answer, but not a satisfactory one ; for that the Bishop said Mr. *Spearman* had used his Son *Sayer* ill, (without naming in what particular) and therefore would not treat with him at all. But Mr. *Spearman* affirms, he never gave the Bishop or Dr. *Sayer*, or any of the family, the least offence, unless his complaining of the Doctor's usage should be esteemed so ; or because (upon his granting a lease to the honourable Mr. *Wortley* and partners, of his coal mines in his freehold estate at *Tanfield Eastern-Leigh*) he had made a provision to stop the way-leave of the mines of his copyhold at *Tanfield Western-Leigh*, unless they could be obtained for his own use and benefit ; and surely in that he was not blame-worthy ; and the event shews it was a necessary caution. Hence, upon the whole, it appears, that the Bishop had long before granted such lease to Dr. *Sayer*, and that Mr. *Spearman*'s first intelligence proved true ; notwithstanding Dr. *Sayer*'s promise and solemn engagement to procure the lease for Mr. *Spearman*. Nevertheless, the Doctor had the assurance on the 8th of *April*, 1729. to send *Stephen Dryden* (a viewer of collieries) with a letter to Mr. *Spearman*, importing, that he had given orders to Mr. *Dryden*, to make trial and bore for coals within his

copyholds at *Tanfield*, the mines being granted to him by the Bishop of *Durham*; and that he had ordered Mr. *Dryden* to make satisfaction for the damage Mr. *Spearman* might suffer thereby in the foil.

Now the mask is taken off: He would make an entry upon Mr. *Spearman*'s estate, without ascertaining his right by a legal trial; and to that end, his agent *Stephen Dryden*, on the 24th of *April*, had been tampering with Mr. *Spearman*'s tenants, to consent to his boring, and upon their refusal, threatened to make *affidavits* of such refusal and opposition, and assured them of a severe prosecution by the Doctor, unless they would give him leave to bore and try, for the small satisfaction of a guinea to be made them for the damage, as appears by his letter and Dr. *Sayer*'s order; but the tenants were bound up in their leases, not to give any such leave, but on the contrary, to be turned off their farms, in case they should give leave: *Stephen Dryden* thereupon, on the 28th of *April*, attempted to bore by force, but was repulsed; and a copy of the lease, by which the tenants were restrained, was produced and shewn to the said *Stephen Dryden*, and the original lease also produced to him: Yet again, on the third day of *May* last, the said *Stephen Dryden* and his workmen, entered forceably on the premises, and proceeded to bore, in order to open the mine, but were discharged, and thereupon they desisted: But on the fourteenth day of *May*, Mr. *Dryden* came himself to Mr. *Spearman*, to give him notice, that he intended to bore the *Monday* following, and offered him two guineas for the damage; and accordingly on the *Monday* following, he, with several others, did attempt
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to bore, but were put off. Now let all impartial men, who hear of this usage, consider and weigh the case as 'tis here fairly stated, and then determine whether it is honourable and just.

Dr. *Sayer* hath likewise a farther view in depriving Mr. *Spearman* of the mines in his inclosed copyholds at *Tanfield Western-Leigh*; for Mr. *Meaburne* having a freehold estate at *Bursblades*, adjoining on the *Western-Leigh*, and lying to the South West thereof, and to the rise-hand, which he the said Mr. *Meaburne* demised to Lady *Clavering*, Alderman *Ridley*, and others, and they finding the same difficult to be won, for want of level to carry off the great weight of water, expended 2000 *l.* or thereabout to no effect: Now the Doctor's agents have discovered that his design, in this matter, is to obtain a share in that colliery at *Bursblades*, and to let the present lessees thereof have a drift, level, and water-course from *Bursblades*, into, and thro' Mr. *Spearman*'s copyhold, to carry off the water, which might be effected for more than thirty fathoms of level in Mr. *Spearman*'s ground; if the Doctor should gain his point, and recover the mines in Mr. *Spearman*'s ground, this would be a good equivalent to the lessees of *Bursblades* colliery, and an inducement to them to grant the Doctor a way-leave to the river, for the mines in the copyhold at *Western-Leigh*; but how just that would be, or how great prejudice it would occasion to Mr. *Spearman*, is submitted to the judgment of all reasonable persons; for it would bring all the weight of water, both of *Bursblades*, and of Mr. *Spearman*'s copyhold grounds, upon his freehold mines, which lie directly to the East and deep-hand; that such load of water must inevitably

drown his freehold mines, and make them not worth working; especially as his freehold mines are not yet opened, nor any waste or receptacles made therein to discharge it. And it is but a few months since the lessees of Mr. *Dawson's* colliery wanted a drift or water-course out of Sir *Francis Clavering's* mines at *Beckley* (of which they were likewise farmers) yet Mr. *Dawson* would not comply with it, till they were obliged to pay him 2000 *l.* for that liberty, which both brought Mr. *Dawson* that ready money, and did him no prejudice; because his (Mr. *Dawson's*) colliery at *Tanfield* was opened and far wrought, and great wastes and receptacles made for the water, and easily carried off, and that at the expence of the lessees: But Mr. *Spearman's* case differs widely from this of Mr. *Dawson's*; for Mr. *Spearman's* freehold mines having such a weight of water from *Bursblades*, and the copyhold in *Tanfield Western-Leigh*, it would make the working of his freehold mines impracticable; for the loss whereof no reparation or satisfaction can be made. If such practices should be allowed, I submit it to all copyholders and leaseholders in this county Palatine, what they may expect from such treatment: Can any leaseholder depend upon the renewal of his lease? no surely, if he disoblige the Bishop or his son-in-law! or if the Doctor takes a liking to the farm, a renewal cannot be expected. Of what value is then that tenure? Where can any leaseholder find a purchaser? The Bishop indeed and his son-in-law have very great advantages, having great preferments to bestow, a numerous Clergy at their levee to be their advocates, having all the offices at law in this jurisdiction at their disposal, and the officers under their influence:

fluence : And to have the greater, Dr. *Sayer* hath employed, as his attorney or solicitor, Mr. *John Mowbray*, clerk of the *Halmot* court, who hath in his custody the books, evidences, and rolls of all the copyhold lands in this county Palatine, excepting those of the manors of *Whickham* and *Gateshead*, which are in the custody of the Bishop's lessees of these two manors ; yet notwithstanding all this Mr. *Spearman* is willing to abide by the verdict of his neighbours, and put his right upon the judgment of his countrymen.

I find it hath been a great doubt, whether any grant or copyhold surrender from the Bishop of *Durham* of any part of the wastes or commons were valid and good in law ; and an attempt was made in the reign of King *Charles I.* to obtain an Act of Parliament, to enable the Bishop of *Durham* to make such grants, as appears by a draught of such Act hereunto annexed.

The claim of mines under inclosed copyholds and leaseholds, is modern and set up within memory of man ; and as to any claim of right for laying waggon-ways, fixing frames of timber, laying stones or rubbish upon the soil, cutting the soil, making trenches or levels for waggon-ways, erecting buildings, or hovels for workmen upon inclosed copyholds, was never pretended to ; and indeed waggon-ways are of a modern invention : But as to mines in many of the wastes and commons, which are very large and profitable in this county, they are not now disputed ; I say in many of the wastes, not in all the wastes ; for even the wastes or commons of *Tanfield*, adjoining upon Mr. *Spearman's* copyhold lands at *Tanfield Western-Leigh*, upon which waste or common, Mr. *Spearman*
hath

hath pasturage and common right appurtenant to his said inclosed copyhold, as also in right of his freehold at the *Eastern* and *Western-Leigh*, all within the manor of *Beamish*; and that very copyhold of Mr. *Spearman's* at *Tanfield Western-Leigh* was parcel of, and taken from *Tanfield* common, and was all parcel of the manor of *Beamish*, and so claimed and enjoyed at this day.

* Bishop *Morton* having claimed the mines therein, and granted a lease thereof to one or more of his servants, who brought ejectments from the same against Colonel *Wray*; upon a solemn tryal the Colonel obtained a verdict, as being appurtenant to his manor of *Beamish*, but an unlucky accident happened; the Bishop's lessees endeavouring to get the possession without trial, in the struggle, one of the workmen was killed by Colonel *Wray's* youngest son, for which he was indicted, and acquitted; the violence of the intrusion occasioning that person's death: Bishop *Morton* thereupon refused to grant any more fishing leases, as he called them.

Vide the exemplifications of these Verdicts, Penes George Pitt and W. D. Arm'.

Afterwards Bishop *Cosins* attempted the like, and granted a lease to his son-in-law Sir *Gilbert Gerrard*, and others, but was also defeated, and a verdict obtained against the Bishop's lessee. Bishop *Crew* also made the like attempt, and granted a lease thereof to *Robert Wright*, Esq; and Mr. *Musgrave Davison*, who brought an ejectment against *George Pitts*, Esq; who had purchased the same of *Tho-*

* N. B. *William Davison*, Esq; and those under whom he claimed, all along enjoyed *Tanfield* common, except the colliery which was sold to Mr. *Pitt* by the *Wray's* family, before Mr. *Davison's* ancestors purchased, and except the herbage enjoyed by the neighbouring land owners. Mr. *Davison* let waggon-ways over and along it, and licences for building houses thereupon, and enjoyed all other privileges, as lord of the manor, till he lately sold that part of the royalties to Lady *Clavering*, who now enjoys it.

mas Wray, son of collonel *Wray*, but durst not proceed to trial; whereupon Mr. *Pitts* preferred his Bill in the court of Chancery at *Westminster*, against Bishop *Crew*, and the lessees *Wright* and *Davison*, and examined many witnesses, and upon a full hearing, obtained a decree in his favour, and a perpetual injunction against the Bishop, his lessees, and Successors.

Sir *Henry Liddell* also obtained a verdict and decree against Bishop *Crew* for the wastes and mines, in great part of *Gateshead* common, as appurtenant to, and within the ancient boundary of his manor, and lordship of *Lamesley* and *Ravensthorpe*. And it is presumed that *James Clavering* of *Greencroft*, Esq; also claims the mines within such part of *Lanchester* common as he hath inclosed, as appurtenant to, and within the ancient boundary of his manor at *Greencroft*. Besides the right honourable the Lord *Bernard*, Lord *Vane*, *John Hylton*, Esq; *William Bromley*, Esq; *George Bowes*, Esq; *Henry Lambton*, Esq; *William Bellasys*, Esq; *William Davison*, Esq; the grandson of *Charles Wren*, Esq; deceased, and others have great wastes and royalties in this county.

Now if the Bishop hath no right to the mines in *Tanfield* common, as it is plain he hath not; how can he have any right to the mines in the inclosed copyhold grounds in *Tanfield* township, and manor of *Beamish*? and which said copyholds actually join to, and upon, and were anciently part of the said *Tanfield* common, and granted *ut de novo incremento*, as aforesaid. The said manor of *Beamish*, of which *Tanfield Eastern*, and *Western-Leigh*; and *Tanfield* town, and *Constabulary*, are parcel and members, was the estate of *Thomas Piercy* Earl of *Northumberland*, who forfeited for his rebellion in Queen

Elizabeth's reign. These estates were granted by the Crown to *Henry Jackman*, Esq; whose title by several conveyances is conveyed to the present worthy owner of the said manor, *William Davison*, Esq; and *Tanfield Leigh*, as now distinguished by the *Eastern* and *Western-Leigh*, to Mr. *Spearman*; for which he owes suit and service to the courts of the said Mr. *Davison*, as appears plainly by the purchase deeds (ready to be produced) that the same were, and yet are, in the manor of *Beamish*, and parcel thereof, and were conveyed by *Jackman* to *Shaftoe*, anno 40 *Eliz' Reginae*. And Mr. *Shaftoe* the former owner of the said lands, by purchase from *Jackman*, had grants and surrenders of these lands now called copyhold at *Western-Leigh* from the lords of the manor of *Beamish*. But in Bishop *Howson's* time a quarrel arising (20 *Jac' 1. & 5 Car' 1.*) between the Lord of *Beamish* manor, and Mr. *Shaftoe's* family, the latter was prevailed on to pay suit and service to the Bishop's court at *Chester*; and Mr. *Spearman* at the time of his purchase (the estate and writings being in the possession of a mortgagee, and not knowing that the same held of the manor of *Beamish*) took surrenders of some part thereof from the Bishop's *Halmot-court* officers; but that will not create a right in the Bishop to any royalties or mines therein, nor prejudice the right of the Lord of the manor of *Beamish*, nor Mr. *Spearman's* estate and interest therein. And it may be made appear of *Tanfield Leigh*, that Mr. *Shaftoe's* predecessor took a grant of the said lands as well of the Lord of the manor of *Beamish*, as of the Bishop of *Durham*, (the latter by special warrant from the Bishop *ut de novo incremento*) and particularly of a parcel of ground now called the intack part of *Tanfield* common, by the description

tion of ten acres, be the same more or less, bounded upon *Munfett Hill* and other bounded, which upon an admeasurement amounts to sixty two acres, or thereabouts; *Shaftee* fenced, and inclosed the same, it adjoining upon *Tanfield Leigh*; but Mr. *Anthony Meaburne* the elder, and others, pulled down the fences before Mr. *Spearman's* purchase, and he never enjoyed the same; for it lies open to the common, and *George Pitts*, Esq; claims the mines in, and under the same, and yearly rides the boundaries thereof; yet Dr. *Sayer* accounts the same in his number of acres of copyhold belonging to Mr. *Spearman*, but will find himself disappointed in his calculation.

It is likewise to be noted, that in the surrenders of the said copyhold lands, as well by the Bishop of *Durham*, as by the Lord of the manor of *Beamish*, they have not excepted or reserved any mines, but the lands are granted absolutely, fine, fees, and rent certain, and are descendable estates of inheritance; and I think it is a maxim that *Quisquis habet solum, habet ab infernis usque ad cælum*: And it is certain that the estate of Mr. *Spearman* at *Tanfield Leigh*, hath always passed in the conveyance by the title or description of *Tanfield Leigh* only; the distinction of *Tanfield Western* and *Eastern-Leigh*, is only used and occasioned by the situation; that part thereof which lies toward the West, is called by the name of *Western-Leigh*; and that part lying towards the East, is called the *Eastern-Leigh*. And what still makes the case clearer and stronger in favour of Mr. *Spearman*, is the several surveys of the manors, wastes and commons belonging to the Bishop of *Durham*, particularly two; one in Bishop *Toby Matthews's* time, in Queen *Elizabeth's* reign, and the other in the time of the long Parliament, when all the Church estates

On the 15th of
July last.

were to be sold; both these surveys express the exact boundaries of *Tanfield Moor*, and were produced about 14 or 15 years ago upon a trial between the late Bishop and Sir *Henry Liddell*, which will shew, that such part of Mr. *Spearman's* estate, as is now called copyhold, was part of, and taken from *Tanfield Moor*; and that *Tanfield Moor* extended to *Hassel Burne*; Mr. *Mowbray*, Mr. *Pewtherer*, and other of the Bishop's officers, admit it to be so; but Mr. *Pewtherer* (the auditor) denies that they are in his custody, and refused Mr. *Spearman* a search; he says, that the trustees of the late Bishop's will have them in their custody; but the reverend Dr. *Eden*, one of the Bishop's trustees, being apply'd to, told Mr. *Pewtherer*, that he delivered them, and all the writings belonging to the See, to Mr. *William Duncomb*, the present Bishop's secretary; whereupon Mr. *Pewtherer* said, that the Bishop denies the auditor's office to be a public office, tho' the tenants pay for inrolling their leases there, and these inrollments have been always allowed as evidence between Lord and tenant, and party and party, and searches never refused in that office till the present Bishop came to the See.

I must not here omit to acquaint my reader, that I am well informed that Dr. *Sayer* hath declared in writing, under his hand and seal, that in consideration of the lease which he has obtained of Mr. *Spearman's* mines, he has obliged himself to pay 100 *l. per ann.* to the Bishop's Lady, as a jointure, in case she survive her husband: Is not this a very extraordinary thing for a Bishop to make a jointure for his wife out of a contested title?

THE office of under-sheriff for the county of *Durham*,
is

is a patent from the Bishop for life, tho' often *quam diu se bene gesserit*, which is, by implication of law, for life, and cannot be avoided, but for some very great misbehaviour in the office, and that by *Scire Facias*. Yet this Bishop, upon his accession to the See, turned out (without ceremony) *John Shaftoe*, Esq; then under-sheriff by patent from the late Bishop for life, confirmed by the Dean and Chapter, and hath sunk the said patent-office of under-sheriff, and only appointed a high-sheriff during pleasure, and a clerk under him, to manage the office of under-sheriff; which was a place of great trust, and was, within memory, managed by a Patentee for life, for 29 years, without reproach or blemish. Nor can it be any objection to say, that by Act of Parliament, an under-sheriff ought only to be for one year, for that Act excepts the under-sheriffs in *London*, and such Counties, where the sheriffs office was then inheritable, and such persons as then had estates of freehold in the office of sheriff, and letters patents made to them, of the office of sheriff, and their under-sheriffs and clerks.

Note, Both county-clerk and goaler are made by the Bishop's patent for life, anciently against the several cases in the law books, *Hobart* 12. *Sir Draper Norion contra Syms*, and 4 *Coke* 32. *Mitton's case*, where both county-clerk and goaler are inseparably annexed to the sheriff's office. *Dyer*, 175. *Scroggs's case*, the philazers office inseparably belonging to the Chief Justice of the Common Pleas, and the Queen's patent void. 7 *Coke* 14. *Calvin's case*, 9 *Coke* 97. *A. Reynolds's case*, office for life; and so the person known and able, as Marshal of King's Bench, and custody of goal granted in fee, admitted. So in the county of *Westmoreland*, the present Earl of *Thanet* is hereditary sheriff.

Now to what end is this office, in this county Palatine funk, and the patent avoided, but to have the greater influence over juries? and in what hazard is the subject here, when one family shall engross the whole power over our civil rights and properties, as well as ecclesiastical jurisdiction? It is well known, that most of the late Judges have frequently declared, that in all the time of sheriff *Spearman*, who had a patent for life, and held it 29 years, there never was a bad verdict, or an ill jury, at *Durham* assizes. And the late Earl of *Scarborough* told Bishop *Crew*, upon that sheriff's death, that he had lost the best officer he ever had; that sheriff indeed was not to be influenced by the Bishop; but to do that Bishop's memory justice, 'tis believed, he never attempted it; for as the sheriff was independent, he was not to be made a tool of, or influenced to engage in any party or faction, but kept his integrity to his death.

The late Bishop *Crew*, in the latter end of his time, made an entry upon an estate at *Hullam* and *Sheraton*, upon Serjeant *Stroud*'s death, as an escheat for want of an heir, and got the tenants to attorne, and held the possession, till the heir at law, Mr. *Evans*, (who lived beyond *London*,) brought his ejectment. This the Bishop illegally did, without an office found; but was told by the heir at law's solicitor in a letter, which is hereto annexed, that one of his Predecessors (that great Prelate *Anth. Becke*) for the like offence, had been impeached in Parliament. The Bishop therefore, being thus threatned with an application to Parliament, for relief, and with an information in the King's Bench, very prudently surrendered up the possession to the heir at law, and paid him a considerable sum for costs and damages; and when he paid that

that money, he laid his hand upon the head of one of his chief Agents, and said, Well, I pay this for thy experience: However, his Lordship was so well satisfied with Mr. *Lee's* plain civil dealing, that some time after, he granted to him and his son (by patent for life) the beneficial office of register of the court of Chancery at *Durham*.

A copy of the Letter sent to Bishop *Crew*, by Mr. *Evans's* agent Mr. *William Lee*, is thought to be material, instructive and fit to be published; and may probably (I at least humbly think it ought) have a just weight and influence with the present Bishop, who may, perhaps, make the same excuse for what he has done, as did a deceased Monarch to *Don Ronquillo*, the *Spanish* Ambassador and the late Marquis of *Hallifax*, (*viz.*) That he is an old man, and must take large steps to raise his family, &c. And again, when he asked the *Don*, doth not your Court consult the Clergy? he answered, yes Sir, and that makes their affairs go so ill, or have so little success, or to that effect.

My Lord,

“THE rights and privileges of your Lordship’s county Palatine, having been often examined in Parliament, upon several petitions and informations which have been exhibited both by and against your Lordship’s Predecessors, Mr. *Evans* is advised by his counsel, to exhibit his information in Parliament against your Lordship; for that your Lordship and agents have entered upon and detain his inheritance, (under pretence for being an *Escheat*,) without having either your Lordship’s title first found upon record, or suing out of legal process, to warrant the entry of your Lordship’s officers.

Mr. *Lee's* Letters.

This

This proceeding, my Lord, he is advised, is a manifest violation of the rights and privileges of the Gentlemen and Freeholders of the county of *Durham*, established to them by the publick submissions of your Lordship's Predecessors; confirmed and ratified by the Crown:

That it is directly contrary to the known usage and constitution of the county Palatine; that it tends to vest a higher prerogative in your Lordship, than is claimed and enjoyed by the Crown it self, who cannot, in this case, enter upon the estate of any subject, without an inquisition first taken to find the title of the Crown:

That it tends to subvert and evade the several laws made for restraining of the prerogative, and for securing the rights and properties of the subject; particularly by the statute of *Magna Charta* chap. 29. which provides that no freeman be disseized of his freehold, without lawful judgment of his Peers. Stat. 28. *Ed.* 3. chap. 3. which further provides, that no man shall be disinherited without due process of law; and hath been since confirmed by the petition of right 3 *Char.* 1. chap. 1. and the statute 16 *Char.* 1. chap. 14. that it is also contrary to the statute of 5 *Rich.* 2. chap. 7. which provides, that none shall make entry into any lands, but where the entry is given by law: As also the statute 8 *Hen.* 6. chap. 9. made against forceable detainer of possession; and several other statutes and publick laws, too tedious to be recited:

That if such proceeding as this should be brought into practice, it would absolutely destroy the ancient privilege, which all the freeholders in this county have hitherto enjoyed, in having an opportunity given them to defend their rights, both upon taking the inquisition, or
finding

finding the title of the Bishop, and traversing the inquisition after 'tis taken.

And if this proceeding against Mr. *Evans* can be justified, it is conceived, the Bishops of *Durham* may, under colour of the same right, enter and seize upon all mens inheritances within the county, and put all to make out their title, before the Bishop makes out any.

Your Lordship has certainly been very ill advised in this affair, and if the opinion of any eminent counsel has been taken, I doubt they have either been misinformed, or not very well instructed in the constitution, rights and usages of the county Palatine.

I dare, my Lord, undertake to produce five thousand precedents of inquisitions taken, for finding the Bishop's title upon record, before an entry was ever made; and it does appear, that the Bishops officers used always to enter, in cases of this nature, by vertue of a special writ for that purpose, setting forth the title as it was found; and (indeed my Lord) I have reason to believe that such a seizure as this was never attempted by any of your Lordship's Predecessors, since the time of *Anth. Beck*.

That Bishop (whose character your Lordship cannot be unacquainted with) did take upon him to seize of several estates within the county, without suing out any writ or commission for having his title first found, and without awarding of any process, to warrant that entry: But how sensible the gentlemen of the county then were of the tendency it had to bring them under slavery and arbitrary government, what disturbance it bred within the county, and what were the consequences that attended that case, will best appear from the records of those times.

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I shall only beg leave to put your Lordship in mind, that one of the articles then agreed to between that Bishop and the gentlemen and freeholders of the county, upon the mediation of King *Ed. 1.* was, That neither the Bishop, nor any of his Successors, should ever afterwards seize any man's estate without first suing a writ or commission out of the Bishop's court of Chancery.

I doubt (my Lord) your Lordship's Agents do not distinguish very well betwixt the case of the Bishop of *Durham*, and of an ordinary Lord of any manor, where no person is in possession of the estate, against whom he may bring his *escheat*, for otherwise the Lord of the manor would be without remedy.

But the Bishop of *Durham* will appear, I believe, to stand upon a different foot; he has rather remedy for *escheat*, and ought to be considered as a publick person, (*Quasi Rex*) and under a capacity much different from a private Lord of a petty manor; such a right in a private Lord, and in a particular case only, cannot be hurtful to the publick; but such a power in the crown, or in the Bishop of *Durham*, who has *Jura Regalia*, within his county Palatine, may admit of a different consideration.

It must be agreed, my Lord, that the Bishops of *Durham* have been always esteemed to be persons invested with royal dignity, or as it is expressed in the ancient record, *Jurisdictionem temporalem in omnes subditos suos libertatis Dunelmensis & auctoritatem Regiam tanquam personæ privilegiis regalibus, insignite per ministros, exercuerunt*; or as another record expresses it, *Tanquam Reges & Principes Mitram gesserit loco Coronæ in signum suæ regalitatis*; yet it must be allowed at the same time, that all the liberties of the Bishop have been adjudged to be derived,

derived, and still dependent upon the Crown, to be circumscribed by the same laws, to be all forfeited upon the misuser or abuse of them, during the Bishop's time who commits the abuse; and that they have been accordingly seized, both upon judgment in Parliament, and other courts; and the reason given in some of these judgments, why the Bishop's liberty ought to be forfeit, for any misuser or abuse of it, is, *Quia justum est quod in eo quo peccat, in eo puniatur*; or as we find it expressed in another of them, *In eo quo insigniùs delinquit, sit de jure puniendus*.

In short (my Lord) Mr. *Evans* is advised this proceeding is very great misuser of the liberty, and he having received your Lordship's answer, that he is not to expect any favour, or any restitution of his estate, 'till he does by law recover it; your Lordship having likewise thought fit to deprive him of all the best counsel of the circuit, he is partly necessitated, and does resolve to exhibit informations, both in Parliament and court of Queen's Bench, in order to have the illegality of these proceedings examined into.

I was indeed desired by him to exhibit his information in Parliament, the first day that the Parliament sat, but I was unwilling, in a case of this nature, to take any advantage of your Lordship's absence, or to proceed any further upon it, 'till I had given your Lordship fair notice of the measures intended to be taken; so that your Lordship might have an opportunity of advising further upon the case, and of being satisfied, in these matters, from your Lordship's own counsel.

Mr. *Evans*, my Lord, knows nothing as yet, of my writing any thing to your Lordship; but I must do justice to my client, and intend to let him know by next post,

what I have done, for he is very pressing to have his prosecution carried on with all vigour and expedition; and it cannot, I think, reasonably be expected, that an estate of three or four hundred pounds *per Annum* should be lost without some struggle; or that the title of Mr. *Evans*, which has been long since proved, allowed and decreed by the court of Chancery, is to be easily overthrown by an imaginary title, that has not yet, in fifty years time, been so much as found by a common inquest.

It is true, my Lord, Mr. *Evans*, at present, is somewhat a stranger to most of the gentlemen of the country, and his interest in Parliament is not, perhaps, very considerable; however, he does not doubt, but that justice will prevail in that honourable House, and that some will be found to stand up in the defence of the liberties of the country.

I am afraid, my Lord, I have trespassed too much upon your Lordship, but your Lordship may be assured, if it were not from a respect I have for your Lordship's honour, as well as interest, I should hardly have taken so much pains to convince your Lordship, and to deprive my self, at the same time, of these advantages, which I had reason to expect from such a prosecution as this might be.

I shall submit the whole to your Lordship's censure and consideration, hoping your Lordship will believe me to be, with the utmost respect, My Lord,

Your Lordship's most obedient Servant,

WILLIAM LEE.

We have indeed instances in History, of the Bishops of *Durham* using their excessive power illegally, and particularly

cularly of *Walcher* Bishop of *Durham*, who having misgoverned the country, and bearing too much with his servants, his Chaplain and *Steward*, murdered *Luorpbus d' Lumley*, upon some disputes arising between that great man and the Bishop about their regalities, and of the sad consequences attending it, by the putting to a violent death the said * Bishop, his Chaplain and *Steward*, and many of the Clergy attending him at *Gateshead* Church, and the Church burnt down, and a great battle there fought between the friends and dependents of these two parties; of which *Hollingshed* and *Goodwin*, in their history, give a particular account. This happened about the 14. *May*, *Anno* 1081. and occasioned *William the Conqueror's* sending down an army into the country, which made much waste and desolation therein. And frequent disputes, since that time, have happened between the Successors of that noble family, and the Bishops of *Durham*.

We can shew many instances, wherein the Bishops of *Durham* have been mis-led by their *Vifler* or prime *Minister*, or *Stewards*, and been forced to fly to the aid of their Barons or Gentry for refuge. It is also well known, that the Bishop hath sufficient riches and power, as much as any Bishop ought to desire, without oppressing any of the subjects: No doubt ten thousand pounds *per Ann.* would satisfy his Lordship; but his Dependents and Agents can set no limits to their desire of riches.

There have been many *Quo Warranto's* brought, even by private persons, as well as the Crown, upon just complaints of the Bishop's over stretching their power, as by *John Baliol*, Sir *Jerome Bowes*, and others.

* This Bishop was the first who took upon him the title of *Count Palatine*, as Sir *William Dugdale* says, in his *Monasticon*; and was also created Earl of *Northumberland* by King *William the Conqueror*.

Inferior jurisdictions have been, and are generally subject to corruption, the court of Marches of *Wales*, franchises of *Ely*, and the court of Lord President of the North, were found oppressive, corrupt and inconvenient, and therefore taken away. And when the court of wards was taken away, it was not thought reasonable by the Legislature, to have any saving in that Act for the Bishop of *Durham's* court of wards; but that the same should be taken away from thence, as from other parts of the kingdom, to put the subjects on an equal level.

The Bishop of *Durham* is at no expence in prosecutions in criminal cases, tho' he claims the forfeitures of criminals convicted; nor are the prosecutions carried on by the Bishop's officers, *ex officio*, but at the expence of the prosecutor.

All the law offices being in the Bishop's gift, are either sold, or given to his servants. Mr. *Hilton*, the present Curfitor, paid between 6 and 700 *l.* for his office of Curfitor; and indeed it were worth enquiry who got the money; for selling offices hath been adjudged criminal; (and contrary to the Statute of *Edward 6.*) much more so, of ecclesiastical preferments, if such sales should be practised, as I hope they are not, notwithstanding the bold whispers of some satyrical people.

Now that there is no patent under-sheriff, there is no *sheriff's tourne* held to any purpose, but calling over the freeholders names, and getting the *essoigne* money; but no juries summoned, or sworn, nor presentments made, nor neighbouring injuries reformed, which used to be of great ease to the subject, and prevented many trials at the assizes; so that ancient and useful court is of no benefit or service here. Nor can I here pass by unobserved a shameful neg-

lect in the Ministers of this Palatinate, which is this. The repository or office of *Custos Rotulorum*, where the records of the county were anciently kept, is so moist, mouldered and decayed, that most of the ancient records are either lost, eat by rats, or destroyed.

The Bishops of *Durham* anciently appointed men of law to be justices, to hold their courts of Common Pleas, but now Clergymen and tradesmen are made justices of the pleas to try the property of the subject, and to hear and determine upon the debates of lawyers in law proceedings. And sometimes they have the assistance of a Prebendary or two, to sit upon the bench; altho' of little experience in matters of law, and ill qualified for that station: And we remember one of them, tho' otherwise a pious good man, but so little skilled in law affairs, that sitting on the bench, and hearing *John Doe* and *Richard Roe* frequently named, said they were very litigious men, and desired to see them, to reprimand them. The late Bishop *Crew* is said to be guilty of the like mistake, for hearing *John Doe* called, desired he might not be condemned in that matter depending, till he could be heard; but being told that *John Doe* was only a man of straw, he blushed at his mistake, and seldom or never appeared on the bench after it. Nay it may be proved, that one of the justices of the pleas (*viz.*) Mr. *Ralph Bambridge* (then Mayor) travelled five miles to *Ferry Hill*, for five shillings, to take the conscience of a fine, from one *Dorothy Shaw* to *Robert Dunn*; and abated six shillings and eight pence, the remainder of his fee of eleven shillings and eight pence, to the attorney for his custom. And another of these mettled justices of the pleas, Dr. *J—n* affirmed, that furze or whinns were timber, and cutting them by tenants was waste. The

The Bishop hath of late caused a clause to be added to many of the leases renewed by him, reserving to himself, and Successors, all the trees planted, or to be planted, and all the mines within the grounds, which none of his Predecessors ever did; which will discourage all persons from planting trees therein, or searching for mines: The Bishops receive homage, and an oath of fealty from the Mayor every year, and from every freeman when admitted into the freedom of the city; which is directly contrary to their allegiance to his Majesty.

As to the improvements, and advance of the revenue and profits of this See, of late years they are very considerable to what they were in the late Bishop's time; which shall be laid open, together with an account of the revenue of all the Clergy in the diocese; and then it will appear how little cause there is for their grasping more from the laity their primitive patrons. What can be the reason of their griping? Surely none of them pay any *præmium* for their preferments? That cannot be thought or suspected; tho' it hath been suggested, that within less time than a century such things have been done. It is a melancholy consideration to examine into the little prosperity or success attending such practices; for it is evident that of forty six Bishops of *Durham*, nine of *Chester le Street*, sixteen of *Lindisfarne* (all centred in this See) yet few or none of their names or families, and no part of their great acquisitions are left remaining at this day.

P A R T III.

THE officers of the Bishop of *Durham's* copyhold-courts in this county Palatine, ^{have} having in many instances aggrieved the copyholders and suitors, who are all copyholders of inheritance, by exacting and innovating fees and customs, and daily increasing and altering ancient fees and customs; oppressing and vexing the tenants with multiplicity of suits, on pretence of forfeitures, for not taking admittances; cutting of timber without licence; not appearing at their courts, &c. Bringing ejectments for every inclosure, or intack of inconsiderable pieces of commons, adjoining to their copyhold farms, and obliging the tenants to take surrenders, tho' of a third part of an acre; altho' the tenant took up such intack, with no farther prospect of advantage, than for the more sure and convenient setting his wall, fence, or out-hedge upon it, or placing his wall, or fence in a straight line, and that often adjoining to a freehold estate; yet make the freeholder take a surrender of the intack as copyhold; by which means they increase the fines, and multiply surrenders; so that a copyholder of ten pounds *per ann.* shall have six or seven surrenders, and his son and heir be obliged to take as many admittances:

As in the case of Sir *John Eden*, Bart. the clerk of the *Halmot* refused to grant him admittances; but when Sir *John* was at the *Bath*, and Mr. *Mowbray* at the same time at *London*, application was made to Mr. *Hilton*, steward of the *Halmot*-courts, to admit Sir *John* as the heir of

Sir *Robert*, to his copyhold estates, who accordingly ordered Mr. *Mowbray*'s clerk to draw up the admittances, and Sir *John* was admitted by Mr. *Hilton* upon payment of the usual fees; but upon Mr. *Mowbray*'s returning into the country, he was desired to make copies of the admittances, and inroll the same. But he refused either to make copies of the admittances, or to enter them in the copyhold books; * and after Sir *John*'s death, Mr. *Hilton* was desired to admit Sir *Robert*, his eldest Son and Heir, who was very willing, and ordered Mr. *Mowbray* to draw up the admittances, but he absolutely refused, and declared both to Mr. *Hilton* and to Lady *Eden*, that he had orders to the contrary; and upon her Ladyship's asking him if he was ordered to do an unjust thing, would he do it? His answer was, He was the Bishop's officer, and must obey directions: Now there is no remedying such abuses by ordinary methods, for should a *Scire Facias* be prosecuted against such officers, they acting under his direction are pretty sure, upon avoidance of their patent, a new one will be granted to the offending officer.

We are aggrieved by frequent grants of great parcels of commons to *Strangers*, or *Favourite* tenants, thereby straitening other Tenants in their herbage and common of pasture, by refusing to admit or pass surrenders or admittances by letter of attorney, or by *dedimus* issued out of the court of Chancery in cases where the parties are sick, or disabled from travelling, or live at a distance from this county, according to the ancient known usage and

* Since this MS. was sent to the press, I am informed that Mr. *Mowbray*, clerk of the *Halmots*, being afraid of complaints (and to prevent Lady *Eden*'s filing a bill against the Bishop and his officers) for not enrolling Sir *John Eden*'s admittances to his copyhold lands, which he had refused for some time before Sir *John*'s death, told Mr. *John Eden*, very lately, that of his own accord he had inrolled them; and desired that Lady *Eden* might not be uneasy; for that her Son, Sir *Robert*, should be admitted when she pleased; although he had refused to do it from before Sir *John*'s death, until now.

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practice, as appears by many evidences, entries and records in the said Chancery; but on the contrary, oblige the tenants, or party interested, to sue out deputations and pay *arbitrary* and *excessive* fines and fees, for such deputations; by keeping the entries of all the surrenders, copies of court-roll, &c. in their houses, and not returning them ingrossed in parchment *leiger*, and record-books or rolls, into the *Latin* Chancery-Office of the said county Palatine, the ancient and safe repository thereof, and where they have (time immemorial) been preserved from decay or imbezzlement, and from hazard by fire; being by many decrees and orders of the court of Chancery, required to be there placed, and were constantly lodged there; and the Curfitor had the custody, and benefit of searches and copies thereof, untill the covetousness of the late *Halmot*-clerk (Mr. *Hutchinson*) for his sole benefit and lucre, refused to return them, and kept them in his dwelling-house, contrary to the said standing rules and practice, and to the great hazard and endangering the loss of the records and evidences of the tenants title to their estates.

We are aggrieved by making incertain, general, imperfect, and often ignorant, and not intelligible descriptions of parcels in surrenders, admittances, and copies of court-roll, thereby occasioning many suits; requiring living witnesses to prove particular facts, usage and enjoyments of possession, and causing frequent perjuries and entangling their titles: — By obliging the tenants to take licences to enable them to make leases for years, (threatening to avoid all leases for a longer term than one year;) they frequently bring ejectments for the estate, claiming it as forfeited, thereby discouraging the tenants from improvement of their lands by long leases: — By splitting sur-

renders and multiplying them; and where a tenant hath several parcels held by different copies of court-roll, refusing to join them in one admittance or surrender to the same person; altho' the entire collective rents of each particular parcel be united and preserved to the Lord; and such refusal grounded only on pretence of prejudicing their office, and lessening their fees: — By making pocket defeasances, thereby concealing incumbrances, to the great prejudice of purchasers: — By corrupt granting and entering surrenders and copies of lands as copyhold, which really were, and are freehold, as in the case of the *Pindar-cloſe* at *Darlington*, to *John Theobalds*, who afterwards mortgaged it to Mr. *Warwick*, as copyhold, yet again sold it as freehold to a third person, who, upon an ejectment brought, recovered it; and to make the fraud more colourable, the officer (Mr. *Hutchinson* deceased) had entered a sham title in the paper-books, and contrived many surrenders from several persons, deriving in all appearance a plain title, and many persons successively interested for the space of sixty years, tho' not a word of truth or fact in the series of that descent and title; and many other like instances; which if the records were from time to time duly inrolled and lodged in the Chancery office, (as they ought to be) would prevent such abuses.

We are no less aggrieved upon several divisions of townships, by granting surrenders by copies of court-roll, of lands really held by lease for years, thereby embarrassing the title, and occasioning suits, and hazarding often the loss of the estate to the purchaser under an heir at law, when the executor, administrator, or creditor of the pretended copyhold vendor shall claim it as a chattel; as in the division of the town-fields of Bishop *Middleham* and

elsewhere: — By exacting great sums for granting licences to the tenants to cut down wood standing on their own ground; and notwithstanding such composition, yet take the bark and tops of trees, or oblige the tenants to pay a third part of the value of the wood in lieu thereof, to the great impoverishing the tenant; and often granting licences to the widow in prejudice of the heir, and commonly to the highest bidder or chapman; and where a tenant (*Mr. Thomas Brads of Flafs*) had taken a licence from the steward to cut wood, and did not for several years afterwards cut it; the tenants after the death or surrender of that steward cut down the wood, and the succeeding steward or clerk of the *Halmot*, notwithstanding such licence, caused an action of trespass to be brought, in the Bishop's name, against one *Lax* and others, who cut and carried away the wood, but thought not fit to expose themselves further by proceeding to trial.

Altho' they know the said copyholds to be descendable estates of inheritance, and the rent, fine and fees certain and unalterable, (by custom immemorial,) yet they frequently declare the tenants to be tenants at will, and their estates forfeited to the Bishop, and that 'tis in the power of the Lord Bishop, to rate and set his fine and fees arbitrarily, from which the tenants may justly apprehend their design of invading their rights, breaking thro' their tenure, and altering their ancient customs: — By their advising the Lord Bishop, of late years, to claim the mines of coal, and quarries of lime-stone, &c. in several inclosed grounds of his copyhold manors, where his Lordship's Predecessors never claimed nor enjoyed them; tho', it may be true, he and they have enjoyed them in the wastes of some particular manors, and that by custom immemorial,

memorial, and not otherwise; but these new claims, in other manors, have been only claimed within thirty years at furthest; and many within two or three years, and never before pretended to; so that no prescription can (on so short a claim) be set up, nor can the custom of one manor be an evidence to guide the custom of another manor; neither is there any exception or reservation contained in the surrenders and copies of court-roll, of any mines, quarries, &c. for lands, by the said surrenders; and copies of court-roll are granted in as full and general words as can be, without exceptions, &c. yet have they prevailed on his Lordship to grant leases thereof to his *Kindred, Stewards, Servants* and *Favourites*, at small annual rents of 2 s. 6 d. or the like; and such lessees have commenced suits in Chancery, and at common law, against the copyhold tenants; they break the soil, open the quarries, convert the stones into lime, set up sale-kilns, make high-ways thro' the tenants inclosures, where no way was ever before pretended to or claimed, lay timber-frames in the ground to make waggon-ways with timber and stones, to carry away the stones and lime; threaten to break up the soil of their meadow and tillage-ground, tho' their hay or corn be standing unreaped, without offering or paying satisfaction for spoil of soil, and refuse the tenant liberty to work, or use the said mines, or burn lime for sale, and for the improvement and use of their ground, as in the case of *Cleadon, Bolden*, copyhold-Townships, and elsewhere; and have engrossed the whole lime-stone quarries, from near the mouth of the river *Tyne*, to above *Ryton*, being about ten miles; so that all that west part of the county is totally deprived of all opportunities of improving their estates by lime, unless they will pay double price for it, (*viz.*) 10 s. 6 d. *per* chalder, and

and carry it five or six miles; whereas, in the east part of the country, they have it at 5 s. *per* chalder, where that engrossing does not prevail; and whereas their lessees used to sell their lime-stones, at *Swalkwell*, at 13 or 14 s. *per* keel, they have now advanced them to 50 s. and more *per* keel; and the neighbours are forced to bring them five or six miles to burn them into lime; and out of this great profit the late Bishop (being imposed on) has reserved no more than a poor half-crown rent in the leases, which enriches the lessees of those quarries, and impoverishes the tenants and all that part of the country, and prevents the improvement thereof by lime.

There's another fact, which I shall leave to others to relate, and tell the circumstances how the copyholders were used in the township of *Newbottle* and manor of *Houghton*, by lease granted of their coal-mines, tho' 'twas promised to be for their benefit; the story is flagrant: The late Bishop, who granted the first lease to his Steward (*Stonebrower*) was ashamed of it, and wrote to the Dean and Chapter of *Durham*, not to confirm the lease, and he put a stop to it; but the present Bishop (*Good man*) granted a new lease to his Son, and to his Steward, and his Son-in-law, Mr. *Fawcett*; and having a majority of Prebends, of his own presenting, got that lease confirmed.

The underlings of the late Bishop of *Durham* prevailed upon his Lordship, for great sums secretly paid to them, to make grants or leases of commons belonging to the copyholders, and which, upon their coming to an agreement for the division, they were entitled to canton among themselves, and enjoy the inheritance thereof; yet such lessees, under colour of such grants, interrupt the tenants in the usage of the said commons, and their common high-

ways along and over the same, and vex them with multiplicity of litigious suits and actions thereabout, as in the case of *Cotefworth* and *Ramsley*, who having got leases of the manors of *Wickham* and *Gateshead*, play'd the tyrant over their neighbours, and made themselves masters of the way-leaves, and great part of the collieries, and thereby got near 3000 *l. per ann.* for one colliery; (three fifths more than ever the owners thereof received to their own use:) The late Bishop was so sensible of this wrong and oppression, that he obliged *Ramsley* and *Cotefworth* to give him bond in three thousand pounds, to indemnify him from the prosecutions of the persons injured; notwithstanding, the present Bishop hath renewed such lease or leases; and the ways are locked up from all persons who do not agree to pay five shillings *per* ten, for all coals led thro' the liberties granted by such lease or leases, whereby Mr. *Cotefworth's* son or administrator clears about 2000 *l.* annual rent.

At their half yearly courts in each manor, if they apprehend any tenant attending to be admitted, or to pass a surrender, they hurry over the business, and suddenly adjourn the court, to prevent the tenant's being admitted, or passing his surrenders, during the sitting of the court, and order him to attend at the office at *Durham*; the fee of such admittance or surrender in court being 16 *d.* and out of court 10 *s.* which discovers the reason of sudden adjournments; and particularly Sir *John Eden*, the third court after Sir *Robert's* death, sent his servant, in order to get admittances for him, but having no copies, was told by the officers, that he must either bring copies, or they would insist upon ten shillings for an admittance, tho' the ancient fee is only 16 *d.* for they were not obliged to
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bring their books to any of their courts; Sir *John* thought to have tried it with the Bishop, but being ill at the *Bath* (where he died) he gave orders for the payment of it, which was accordingly done. And in some cases where it happens that there are two or more daughters, and no sons, heirs to a tenant, tho' the law hath made them to have a joint interest, as parceners and as one heir, and consequently one admittance for them all, yet the officers have obliged them to severance, and to take several admittances, and upon their refusal have claimed the estate as forfeited, and made entries thereupon; and particularly in the case of one *Watson's* wife and two sisters, for some lands at *Coundon*, and made them pay a considerable sum of money to take off the prosecution.

The Bishop's officers, the steward and clerk of the *Halmots*, refused to let Mr. *Spearman* pass a surrender of his copyhold lands at *Tanfield Western-Leigh*, (to the use of his will by the old descriptions) unless by their new descriptions, whereby they would have included part of his freehold estate, so that a surrender is not yet passed; and 'tis presumed Dr. *Sayer* (the Bishop's Son-in-law) was the occasion of that obstruction, having prevailed with the Bishop to grant him a lease of the mines contrary to the Doctor's agreement with Mr. *Spearman*, as before set forth; the said officers having purchased their employments at great rates, urge that as a reason to countenance their ill practices, and for advancing their fees, &c. And altho' they are settled in a solemn manner by Judge *Hutton's* decree, as Chancellor of *Durham*, yet the remedy by suing forth a copy of the said decree and service, and of suing out process against offenders therein upon every occasion, proves so expensive, and the determination of the

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court of Chancery (being held but once a year) thereupon so very dilatory, that instead of remedying matters, it rather encourageth offenders to withstand it; and the tenant, rather than hazard his title by the delay, or expend 10*l.* in the prosecution, when he may be dispatched at the expence of 20*s.* more than due fees, submits to the abuse.

For an effectual remedying of these and the like abuses, to ascertain the fees, fines and customs, betwixt the Lord and tenants, to make the tenure more easy and less burthensome, and to enable the tenants to make leases for years without the trouble and expence of licences; to devise their estates by will, or to surrender to the use of their will; to pass their estates by letter of attorney or by *dedimus*; to have the mines in their estates secured to them; to have the records inrolled and lodged in the chancery as usual, and the rather, because the clerk of the *Halmots* has sometimes refused general searches to be made in his office by attorneys that have applied to him for that purpose; to take off the many restrictions and badges of vassalage upon that tenure, removed (at and before the Restoration) in like cases from the freehold tenure; that the copyholders may be put upon an equal bottom with the freeholders, tho' without lessening or impairing, but always reserving the Lord Bishop's ancient reserved rents and services, being equally subject to taxes, and performing the same services on juries, and other duties to the Crown and country as freeholders, and having the same right of descent and inheritance in their estates; it may reasonably be hoped they may be relieved, under these circumstances, by the present Parliament; to which end it is hereby recommended to the copyholders within the said county Palatine, to exert their rights upon
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this occasion, and at least to maintain, if not improve their privileges and customs, and use their united endeavours to be discharged from the terms of vassalage imposed on them by this tenure, made heavier by the corrupt conduct of the officers; and to that purpose to consider of proper methods for their relief; and the better to effect the same, to depute one person from each township, to meet and consult thereupon, and they to appoint a small number, not exceeding ten copyholders, on behalf of the rest, to settle and prepare petitions, and collect voluntary contributions towards the expence of soliciting and passing a Bill in Parliament touching the premisses.

It may be objected, that taking away the county Palatine and the Bishop's temporal power, will be of prejudice to the city of *Durham*, and occasion less resort of company to the city and court of law there; if that be reason sufficient to continue that power, as surely the trifling profit of a few inn-keepers ought not to be put in ballance with the general inconvenience to the inhabitants of the county; yet the Legislature may take away the power from the Bishop, and continue the courts to be held in the same place as formerly, only remitting to the Crown the appointment of judges and officers, thereby to prevent the dependence upon, or influence of the Bishop and his domesticks; as in *Cheshire* and *Lancashire*, where men of merit, learning and skill in the law, are appointed by the Crown for such considerable stations, as to judge of or determine the rights and property of the subject; and such cannot be suspected of partiality: Oh! but 'tis said, the present officers are invested with a property in their offices, many of them being purchased; and to avoid them, would be invading property; and as to the latter, 'twas

unlawful, nay criminal; however that be, an equivalent may be given them, and a reasonable expedient will be offered at a meeting of the Gentlemen of the county on this occasion, to consider of proper measures for obtaining a Bill in Parliament, next sessions, touching the premises.

And whereas the tenants and lessees of the Bishop and Dean and Chapter of *Durham*, (untill the late unhappy troubles and usurpation of the long Parliament and *Oliver Cromwell*) had tenant and customary right, and right of renewal at a rent and fine certain; but upon seizure and sale of their estates, by the said powers, the tenants were many of them forced to purchase the inheritance of their estates from that arbitrary Government. Yet on the happy Restoration of the late King *Charles II.* upon a trial at bar, between the Dean and Chapter and their tenants, they insisted on such right; but by death of ancient witnesses and misfortunes of the times, having lost most of their material writings and evidences, and the court interest then running high in favour of the Clergy, a verdict was obtained (not without censure) for the Dean and Chapter; but I am not yet well informed what issue the dispute between the Bishop and his lessees had. Nevertheless the said late King *Charles II.* and his Privy Council, by order of that honourable Board, earnestly recommended it to the Bishop, and to the said Dean and Chapter, to continue the ancient tenants and their heirs and representatives in their estates, upon the usual and customary terms, not to advance their rents or fines, but to use them moderately and tenderly, without increasing or advancing them in any respect; which order they observed tolerably well for many years; but of late the present Bishop and Dean
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and Chapter, and other ecclesiasticks within this diocese, have made strict inquiries into all the improvements of their tenants, greatly advanced, and severely exacted arbitrary and excessive fines, rents and fees; and the Dean and Chapter have lately contrived an oath to be taken by each member of the body, and also by their Register, not to discover their secrets: They have, by this means, thrown off all regard to the ancient usage, and consider not the industry and expence of the tenants in the improvements of their estates; and are not satisfied with the best certain revenue and ecclesiastick preferments in *Britain*, which they once a year come into the county to collect, and hastily return into the South, to spend or improve; so that the country is impoverished. The non-residence and pluralities of many of the Clergy in this Diocese are frequent and destructive to this county; (wherein the Church hath so great a patrimony;) I may justly say, 'tis a great grievance we labour under; for tho' their stay be short, they generally have all sorts of provisions from the South, except bread and butcher's-meat, which renders them odious to the people, who call them *Rent-gatherers*; and in consequence is a great prejudice to religion; the contempt of the Clergy being one great cause of the decay of Christian piety. We have one remarkable instance of the wisdom and charity of one of the late members of this church; (*viz.*) the venerable Dr. Grey, one of the Prebendaries, who was indeed a great ornament to the church; he was a *Joseph* among his brethren; and it must be admitted, some such worthy men there are, and have often been among them, which will always be remembered to their honour. This truly pious man used to tell his brethren, that the laity were anciently their patrons, their lands came from
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the laity's benefaction, and often recommended it to his brethren to keep to the old rule in Bishop *Morton's* time (that Bishop was the Doctor's patron, and whose good example he strictly followed) to be easy and moderate in renewals of leases, and to encourage the tenants improvements, if they meant to avoid the evil of those unhappy civil wars he had bitterly tasted of, and to which, he said, some rigid Clergy had not a little contributed; and by provoking the laity, had (in a great measure) occasioned; but that advice is not now regarded; I have known a tenant lately raised in the fine of a lease from 40 s. to 10 l. and another from 50 s. to 20 l. and I dare undertake to prove a thousand of the like instances.

It is therefore proposed to the said lessees, to consult among themselves if this be not a proper juncture to apply to the King in Parliament by petition, to have their ancient rights, customs, fines, fees and terms of renewal ascertained and established, and their woods (planted by the tenants) and mines secured to them; and to that end, to appoint seven or ten of their number to meet with the representatives of the copyholders, and join in such their measures for redress; and 'tis to be hoped, the late attempt made to obtain a Bill in Parliament, to enable the Clergy to grant leases of mines in their copyhold and leasehold lands, will rouse them from their lethargy, to unite their purses and counsel, to prevent their ruin; and no way appears so fair and practicable, as a humble application by petition to the King in Parliament for relief.

Settling the fines and fees, and mines to the tenant would be a benefit to both parties, and quiet the minds of the tenants; they and their Landlords would be upon a certainty; it would encourage the tenants industry to search for mines,

plant wood, and improve the lands for the common good ; it would prevent grumbling, make each content with his own, and secure the tenants in the interest of their landlords, and make them resolute to support them in all events.

Now as these circumstances and complaints are urged by, and occur to the memory of one particular tenant, it is very reasonable to believe that many more may arise, and occur to the knowledge of other tenants ; and it is therefore just, that each tenant injured, or privy to the causes of complaint, should contribute their united endeavours, as in a common cause, for redress. The case of *Ulysses* with *Polyphemus* is no ill parallel ; The only hopes they have, is to be preserved as *Ulysses* was, to be the last to be devoured ; let them therefore unite in the method proposed to prevent the ruine in prospect.

Since this was wrote, we have an account that Mr. *Gamage*, the new Rector of *Sedgefield* (a living of 800*l.* per ann.) hath given notice to the land owners of *Sedgefield* township, that he will not abide by their composition, settled by consent of parties, by decree of the court of Chancery at *Durham*, soon after the Restoration ; and under which, six of his immediate predecessors, (*viz.*) Dr. *Naylor*, Dr. *Granvill*, Dr. *Clayton*, Dr. *Pickering*, Dr. *Morton*, and Dr. *Rundell*, severally acquiesced. He hath given notice that he will break thro' the same, and take the tithes in kind, altho' he hath received two payments, and given acquittances for the same ; and tho' he receives this great revenue in this small county, he thinks not fit to bestow much of it in the county ; for last *Christmas* he had 32 stone weight of groceries sent from *London* by sea to *Stockton*, and from thence by land-carriage to his house at *Sedgefield*. Many more instances may be shewn of the
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late preferred Clergy here; I say most of these preferred by this Bishop, use the like means of sending their provisions from *London*: At this rate the church revenues are mostly carried above, and do not circulate here, whereby this county is very much impoverished.

As to the story of the Bishop's ordaining Mr. *Wicket* Priest and Deacon, in three days time, tho' never admitted a member of any University, and inducting him to the rich rectory of *Branspeth*, and what share Dr. *Sayer* had in that affair, is already too publick to need my pen to describe his good or ill qualifications; the flagrancy of that fact, of his life and conversation, being matters only fit to come under consideration of a Convocation. The Bishop has indeed furnished us with a choice collection of Clergy for the improvement of our Country; such fill our finest livings and bench of civil justice in this poor county Palatine; such are our teachers; such are our magistrates! A brace of Aldermen, Justices of the peace, pleas and goal delivery, who are rather proper objects, than dispensers of civil justice; a third his Steward, whom the Bishop calls *old Buff*, others *Volpone*; he (to have the greater influence in affairs) presides in court and cabals here, and lately presumed to close up with rails (made with the Bishop's timber) one end of the most ancient street in the city, called the *King's-street*, thereby obstructing the passage of either coach, carriage, or horse, to the great nuisance and prejudice of the subject; and took down an ancient gateway and gate in another street, called *Bow-lane*; and another gate going from the *Palace-green* to the *Broken-walls*; both which gates used to be locked up at nights in winter time by the constable of the parish of *St. Mary le Bowe*, and was of great security to that part

of the city from pilfering thieves; and did this, in an *arbitrary manner*, and without legal authority, or consulting the neighbours, and applied the frames of timber, gates, hinges, bolts and stones to the Bishop's or his own use, altho' belonging to and provided by the parishioners.

I could add much more to this work, (having large materials) but shall wait till I see the effect hereof; and for the present, only conclude with this exhortation to a Bishop; Let him feed and not devour the flock committed to his charge, and consider well the words of the apostolical constitutions upon the duty of a Bishop, lib. 11. cap. 6.

Sit autem Episcopus turpis lucri non quæsit, præsertim de Gentilibus; malitque detrimentum capere quam inferre; non sit avarus, non maledicus, non falsus testis, non iracundus, non contentiosus, non negotiis litibusque secularibus implicitus, non pro alio sponsor, aut in causis pecuniariis advocatus; non ambitiosus, non duplicis sententiæ, non bilinguis calumniæ, & maledicentiæ cupidus auditor, non hypocrita, fallaciis vanis non utens, quia hæc omnia Deo sunt inimica, Dæmonibus grata.

A Bishop (saith St. *Jerome*) differeth from a King or temporal Prince; (a) a Bishop's governance should be so gentle and easy, that men hardly can be unwilling to comply with it; but should obey, as St. *Peter* exhorteth, not by constraint, but of their own accord; (b) and let (saith he) Bishops be content with their honour; () let them know themselves to be fathers, not lords; they should be loved, not feared.

He ought to rule them so, that they may be willing to be ruled, 1. *Pet.* v. (d) And thou (saith St. *Bernard* to Pope

(a) Ille enim nolentibus præest, hic volentibus. Hier' Epist. 3. ad Nepot.

(b) Sed contenti sint honore suo; patres se sciant esse non Dom. nos. Hier. Epist. 62. ad Theoph. cap. 3.

(c) Amari Parens & Episcopus debet, non timeri; ibidem cap. 1.

(d) Inde denique superintendis, sonante tibi Episcopi nomine non Dominium, sed officium. Bern. de Consil. 2. 6.

Eugenius) doſt ſuperintend; the name of Biſhop ſignifying to thee, not dominion, but duty;

(^c) For Biſhops ought to be diſentangled from ſecular cares, and to take charge of their people, and not to be long abſent from their Churches.

(^f) Therefore when a Biſhop or the eccleſiaſtical miniſtry is to be committed to any man, let ſuch a perſon be found out for this purpoſe, who can reſide upon the place and diſcharge the cure by himſelf; but if it prove otherwiſe, then let him who has received, loſe that which he has taken contrary to the holy Canons.

And I recommend to Dr. *Sayer* the peruſal of the hiſtory of (^g) *Cæſar Borgia*, baſtard-ſon of Pope *Alexander* the 6th, upon whom the poets of his time made the following diſtichs; he was a rapacious land pirate and oppreſſor, the greateſt tyrant of that age.

I.

*Borgia Cæſar erat, factis & nomine Cæſar,
Aut nihil, aut Cæſar, dixit, utrumque fuit.*

II.

*Aut nihil, aut Cæſar, vult dici Borgia; quid ni?
Cum ſimul & Cæſar, poſſit, & eſſe nihil.*

III.

*Omnia vincebas, ſperabas omnia Cæſar,
Omnia deſciant, incipis eſſe nihil.*

The ſad example and, ill ſucceſs of that wicked man, may probably deter the Doctor from purſuing his oppreſſive deſigns, and incline him to more pacifick meaſures,

(^c) Oportet enim Episcopos, curis ſecularibus expeditos curam ſuorum agere populorum nec eccleſiis ſuis abeſſe diutius: P. Paſchal. 111. Epist. 22.

(^f) Cum igitur eccleſia vel eccleſiaſticum miniſterium committi debet, talis ad hæc perſona quærat quæ reſidere in loco & curam ejus per ſeipſum valet exercere quod ſi aliter fuerit actum & qui receperit quod contra ſanctos Canones accepit, amittat. Conſil. de Lat. 3. (ſub Alex. III.) cap. 13. (^g) Vid. Guicciardin.

and to consider the incertainty of human affairs, and give peace to the tenants; if so, my endeavours will not be in vain, and I may then say to my fellow tenants, as *Æneas* did to his companions in a storm;

— *Revocate animos, mæstumque timorem*
Mittite, forsan & hæc olim meminisse juvabit.

A copy of a preamble of a draught of an Act of Parliament designed to have been brought into the House by Bishop Morton, and found among his papers, to enable Bishops of Durham to grant parcels of commons by surrenders to be inclosed, Ut de novo incremento.

WHEREAS for many years before our late Sovereign Lord King *James* of blessed memory, his happy coming to the Crown of *England*, by reason of the differences that then were between the Kingdom of *England* and *Scotland*, many incursions then happened, and were made by the *Scotchmen* into the borders of this Kingdom of *England*, adjoining to the borders of *Scotland*, whereby a great quantity and many thousand acres of ground within the county of *Durham*, extending in length above 20 miles, doth lie open and uninhabited with people, nor any profit thereof made, but the same became very barren and unprofitable, and there, for the most part, nothing growing but ling-fuzzes, hadder and such like.

And whereas since his Majesty's coming to the Crown of *England*, diverse small parcels of the said great waste, and other great wastes, commons and moors within the county Palatine of *Durham*, belonging to the Bishops of *Durham* and their See, have within these 40 or 50 years been by the said Bishop, at the earnest request of the inhabitants there, improved and inclosed, and granted by copies of court-roll to the said inhabitants and their heirs and sequels *in jure*, reserving thereby some small rents to the Bishop of *Durham* and his Successors;

And whereas it is, and may be doubtful and questionable in law,
whether

whether such improvements and grants be, and stand good with the laws of this Kingdom; therefore the said copyholders and other inhabitants there, have earnestly entreated the now Bishop of *Durham*, humbly to beseech his Majesty and the Lords and Commons of this present Parliament, that the said improvements, inclosures and grants already made, may be ratified, established, continued, confirmed and made good by Act of this present Parliament; and that the said Bishop and his Successors may have full power and authority hereafter to make and grant parcels of the said wastes to be inclosed and granted by copy of court-roll (as aforesaid) reserving some small rents for the same, to the said Bishop and his Successors; whereby a great part of the said wastes may be inhabited with people, (which is not yet) and part of the same turned into tillage, and other parts thereof by the labour and industry of the people made good meadow and pasture for the keeping of oxen, kine and sheep for manuring the tillage and arable land, and also for the keeping of Milch kine, and for breeding and — of calves, and upon the improving and inclosing the same into diverse parts and parcels; there will be many hedges set with quicks, and planted with trees of oak, ash and other good kind of wood-sett, for building and making of ships and other vessels, which will be exceeding great profit for the Commonwealth, both for corn and growth of wood, which is much wanting in this county, by reason, especially of iron-works and otherwise, and for making habitations for many distressed poor families that have no habitations, but go wandering up and down in the county, for want of people to set them on work, who thereby also would become good laboursome and serviceable subjects, when your Majesty's Heirs and Successors shall have occasion to command and use them; and for employing themselves to husbandry and other good labours profitable for the Commonwealth, in those parts of this county, where such improving and inclosing we shall make as aforesaid. Therefore be it enacted, &c.

F I N I S.

POSTSCRIPT

SINCE the preceding sheets came from the press, the Author has met with another very extraordinary case, which, as having a necessary relation to what is said above, is thought proper to be added by way of postscript.

THE Dean and Chapter of *Durham* are seiz'd of 15 farms in the township of *Ferryhill*, and 14 farms in the township of *Merrington*, which have been always demised by them to several persons for 21 years, reserving the usual and accustomed rent, and renewing the same every seven years, as usual in such cases. In which leases there is, and in all former leases there hath been, the following *Proviso*, (*viz.*)

Provided always, and this present lease is, and shall be, upon condition, that if the said tenant *A. B.* his executors, administrators and assigns, do not yearly, and every year during this present lease, plow up, keep in tillage, or sow with corn and grain, as much of the grounds hereby demised, both in quantity and quality, as hath been of the grounds heretofore demised, with the said farmhold used in tillage; or in default thereof, if he, his executors, administrators and assigns do not yearly and every year during the said demise, at the feast of St. *Michael* the Arch-Angel, satisfy and pay unto such person [*i. e.* the Dean] and persons as shall have right to the tyth-corn of the said tenement, or at such other time or times as shall be agreed on betwixt such person and persons, and him the said *A. B.* his executors, administrators and assigns, in lieu of such corn-tyth, so much money as the said tyth-corn growing on the said lands belonging to the said demised premises hath been esteemed worth, or letten for, or as hath

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been

been yielded for the same in any year, for the space of these forty years last past, or when the same was in the best estate for tillage, that then and from thenceforth this present lease to cease, be utterly void and of none effect.

It appears by acquittances, and other evidence, that the tenants under the said Dean and Chapter of the said several farms, have by ancient usage and custom, for above 100 years, beyond the memory of any living man, paid 50s. *per Ann.* for each farm in *Ferryhill*, and 53s. *per Ann.* for each farm in *Merrington* to the Dean of *Durham* for the time being, as a *Modus* in lieu of corn-tyth; and tho' many of such farms were all in grass and no corn grew thereupon, and that for 30 years together, yet in such years the tenants of such grass farms paid the said *Modus* and yearly payments of 50s. for each farm in *Ferryhill*, and 53s. for each farm in *Merrington*, and no more nor less. During the late civil wars the tenants annually paid the like sums to the officers or assignees of the Long Parliament for and in lieu of corn-tyth: and the several Deans, Dr. *William James*, Sir *Adam Newton*, Dr. *Hunt*, Dr. *Balcanquall*, Dr. *Barwick*, Dr. *Sudbury*, Dr. *Granvill*, Dr. *Comber*, Dr. *Montague* successively accepted these payments without any variation. Notwithstanding the present Dean, Dr. *Bland*, on the 6th of *August* Instant (tho' the Deanery of *Durham* is advanced at least 400*l.* *per Ann.* and now worth 2400*l.* *per Ann.* and upwards) sent his agent to the tenants to forbid them carrying in their corn till his tyth should be set out for him in kind.

However, the owners of the said farms hope, that the Dean is bound to accept of these customary payments in lieu of corn-tyth, either by prescription or by implication or construction of the *proviso* above mentioned, (the present Dean having join'd in many of the leases) that he thereby agreed to accept the said annual sums in lieu of corn-tyth. 'Tis very true that the several preceding Deans have indulg'd the tenants in the

the time of payment, and accepted the same by two half yearly payments. But as the present Dean thinks not fit so to do, the tenants are willing to pay the whole annual payments on *Michaelmas* day, (29th September) so as the ancient payment for the corn-tyth be not altered nor advanced; and the rather, for that soon after the Restoration, Dean *Sudbury* caused the annual land rent to be advanced from 49s. 2d. to 4l. for each farm; and if the present Dean and Chapter think fit to advance the ancient rents at pleasure, the tenants estates will be of no value to be sold: however it is humbly apprehended, that during the continuance of the present leases the Dean is not intitled to the tyth of corn in kind: After their expiration the farms with the tyths must fall into their hands; for 'twill not be worth the tenants while to renew or improve upon such precarious terms. In the mean time it may be hoped from the justice of the Legislature, that the tenants industry and expence in improvements will be considered, and terms of renewal ascertained; for the tenants are neither able nor willing to contend with their opulent landlords; though in other cases such uniform ancient payments would no doubt be evidence of a *Modus* or prescriptive rent, in lieu of corn-tyth, and regard would be had to the *Stat. Ed. 6.* which directs tyths to be paid as they have been for 40 years before; and that Law hath no doubt been consider'd in the framing the *Proviso* abovementioned, in the several leases of the Dean and Chapter: But should the tenants controvert this matter, they may assuredly apprehend a refusal of renewing their leases, unless upon hard terms.

[See Addition at the end.]

The following Case, which tho' fresh in every one's memory, and not less remarkable than any of the former, is judged necessary to be inserted.

THE Bishop of *Durham* being seized of the Manor of *North-Allerton* and *Allerton-Shire*, and several townships in that neighbourhood in right of the See of *Durham*, hath since his Accession claimed all mines which may be discovered within the same, as well in the inclosed grounds, as in the wastes and commons. Mr. *Brafs* having found a seam of coal in the wastes of the township of *Burroughby*, applied to his Lordship in order to obtain a lease; he and some other Gentlemen intending to venture a considerable sum of money therein for the conveniency of that country, which very much wants coal. The Bishop gave him repeated assurances that he shou'd have such lease on very moderate terms; but in the interim, Dr. *Sayer* considering it might be of great advantage to himself, by several letters and treaties encouraged Mr. *Brafs* and the other Gentlemen to work the colliery, and promis'd them a share in it, but wou'd not come to any certainty with them, nor let them know what share they were to have; whereupon those Gentlemen desisted; and 'tis now discover'd that the Dr. hath for some years past had, and obtained to himself, from the Bishop, a lease of the mines within all that liberty, tho' they were never in lease before.

The wood growing on *Cotcliffe* grounds within that liberty has been by all former Bishops of *Durham* preserved, and never was cut, but for repairing the churches there; nevertheless Dr. *S—r* hath cut down great part of it for his own private use; and 'tis not to be doubted but the residue of that wood will be apply'd to his coal works. And *Frankland* wood belonging to that See is going down apace.

[See addition at the end.]

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Place this next, and by way of Addition to Pag. 127.

The said Tenants of *Ferryhill* and *Merrington* have been obliged, (by Threats) to submit to the Dean, who requir'd them to deliver up their old Acquittances, and hath advanced their Tyth-Rents near a third part.

The Township of *Great-Chilton*, consisting of 14 Freehold Farms, always paid a *Modus* to the Dean of *Durham*, in lieu of Corn Tyth.

The present Dean sent to demand their Tyth in kind this Year, and one of the Land Owners (being a Protestant Dissenter) was threatned in an odd manner to be scourged with Scorpions.

But they being resolved to defend their *Modus* or *Prescript* Rent, tender'd the same to the Dean on *Michaelmas* Day, (the usual day of Payment) he thought fit to accept it, knowing their Estates to be Freehold, and that they had no dependance on him, and durst not risque a Suit with 'em.

The said Dean and Chapter's Lessee of the Ferryboat at *South-Shields*, (a poor Widow) being injur'd by another Person's setting up a Ferryboat, and taking upon him the Conveying of Passengers over the River *Tyne*, prosecuted an Action, and recovered about 20 *l.* Damages and Costs, for which he was confined in Prison.

And the Lessee, desirous to renew her Lease, thought it a piece of Merit in supporting the Dean and Chapter's Right, apply'd to that Body for such Renewall, and offer'd

[§ § §]

fer'd the usual Fine and Fees ; but was deny'd, unless she wou'd discharge the Prisoner, and quit the Damages and Costs : Whereupon her Attorney told the Dean, he had a Letter of an extraordinary nature from their Register, and wrote by their Order, threatening his Clyent, that her Lease should never be renewed, unless she complied with these harsh Terms. ---- He seem'd surpriz'd, and told his Brethren (present in Chapter) that it was imprudently done to let such a thing appear under their Hands, which might be made ill use of, upon a Complaint in Parliament, or to that effect ; and pressed the Attorney to deliver it up ; which he refused to do, unless they would renew such Lease to his Clyent upon the old Terms ; which they thereupon complied with, granted the Renewall, and took up the Letter.

They (particularly the Dean, *Apicius Rundell*, Mr. *Sacker*, who calls the Gentlemen here Mob, and their Agents) have in numerous other Instances threatned their Tenants to vote in Elections of Members of Parliament, as they shall direct, or never to expect Renewalls of their several Leases ; and the Bishop's Agents have done the like to his Tenants. What then may the Tenants expect from such arbitrary Proceedings ? Where is now the Freedom of Elections ?





Place this next after Pag. 128.

Alexander Jopling, Tenant of *Frankland Park*, (under old *Buff* the Keeper thereof), who a few Years ago was not able to farm 50 *l. per Annum* without a Partner, hath lately laid out 1200 *l.* in the Purchase of an Estate in the Township of *Cornforth*, and that raised by no other visible Means than by the Pickings he hath got by that Wood for Hush-Money, and he has built a dwelling House on the purchas'd Premises with Oak-Timber from *Frankland Wood*. Let Orator *F--wc--t* make an Apology for this if he can ? It cannot be easily made appear what the Keeper has got otherwise than by a Calculation of what appears that his Understrapper the Tenant has got.

The Bishop of *Durham* presented his Kinsman Mr. *Hinton*, (Son to Mr. *Remnant-Busy-Body*) to the Vicaridge of *Leak*, and there wanting a Vicaridge-House, his Lordship was pleased to grant him a License to cut down several Oak-Trees out of *Cotcliffe Wood* for such House : My good Cozen cut the Wood, and thinking Money more useful to him than the House, sold it, but never built the House, and also cut down a great many plain Trees which grew round the Church-Yard, and sold 'em : These being hopeful Signs of his Thriving, his Lordship has since been pleased to give him a Living at *Whitburne* of 250 *l.* more Yearly Value than that Vicaridge, and in lieu thereof; but how worthy he's



he's of it, may be judged from his not knowing *Epiphany* to be a Festival of the Church, but said 'twas an old *Popish* Holy-day taken from St. *Epiphanius*; and that the 5th of *November* ought to be kept as strict a Fast as *Good-Friday*; and when he was at *Leak*, he employ'd his Parish-Clerk to transcribe Bishop *Hoadley's* Sermons for him to preach.

Dr. S—— hath, (to the Surprize and Terror of many) obtained a Grant of all the Fines, Amerciaments, Escheats, Forfeitures, Issues, Defaults of Jurors, Breach of Recognizances, &c. arising in the several Courts of this County Palatine, and in the General Quarter-Sessions of the Peace, and Courts of *Oyer and Terminer*, Assize and Goal-Delivery; and the same are now levied with unusual Rigour. Such Grant is unprecedented here, and the Inhabitants of this unhappy County justly apprehend the same Treatment as *Empson* and *Dudley* gave the Subjects in King *HENRY VIIIth's* Reign; yet hope their Imitators will in due Time share the same Fate.



FH

MVSEVM
BRITANNICVM

To the Parliament of the Commonwealth of England, Scotland, and Ireland.

The Humble Petition of John Joplin, Tenant to the late Bishop of Durham, on the behalf of himself and several hundreds of Families, Tenants to the said Bishop, in the Mannors of Easington, Mickleham, Houghton, Stockton, Chester, and Lanchester, all Tenants of the said late Bishop of Durham;

In most humble wise sheweth,

THAT your Petitioners and their Ancestors, have for many hundreds of yeers held their Tenements respectively of the Bishops of *Durham* successively, by certain customary Tenures and services, for the defence of the Borders of *England*, against the Frontiers of *Scotland*.

That by long usage, and course of time, and the constant enjoyment by your Petitioners, and their Ancestors, of their respective Estates, the same hath been accepted in nature of a customary Inheritance, and accordingly enjoyed by your Petitioners, and their Ancestors respectively. And when your Petitions were prevailed withall to accept of Leases at an easie Rent and Fine, when Border-service began to cease: Yet such of your Petitioners as were constrained to take Leases, did from time to time renew their Leases, not exceeding three yeers Fine, to the said Bishop, for renewing of their respective Leases for 21 yeers, or three Lives: And moreover, it was usual for your Petitioners to sell their Interest in their respective Farms, at the expiration of their Leases, for seven yeers purchase, and sometimes more. And such of the Tenants of the said Bishops as could not be prevailed withall to take Leases, do to this day enjoy their ancient customary Inheritances; witness the Tenants of the Mannors of *Walsingham* and *Bolden*, who do still enjoy the same accordingly; and a reprice of that customary right, was made to Sir *Arthur Haselrige*, in his purchase of the Mannor of *Walsingham* aforesaid.

That in the year 1647. the Parliament did pass an Ordinance for the sale of Bishops Lands; whereupon Surveyors did come into the County to Survey the Lands belonging to the said Bishop of *Durham*; your Petitioners being altogether ignorant of the passing of any such Ordinance, till such time as the Surveyors came upon their grounds, to Survey your Petitioners respective Farms. Neither was the said Ordinance ever published in the Country, by any authority, whereby your Petitioners could take notice thereof. And besides, your Petitioners being the onely County in *England*, that never had Member of Parliament to serve for them in the Commons House of Parliament (onely their Bishop, who was their Representative, did for some time sit in the Lords House, till Bishops were disabled from sitting in Parliament) had none to stand up for them when the said Ordinance did pass, to make known your Petitioners customary and equitable right to the premisses, or to give your Petitioners directions (who lived above two hundred miles from *London*) what way to proceed, to make out their just, and equitable claims to renew their Leases as aforesaid; this being the first Ordinance or Act of sale which (of this nature) ever came into the Country; whereby your Petitioners were kept in ignorance, insomuch that not one of your Petitioners, who were Lease-holders, consisting of many hundred families, put in a claim to their custome, usage, and equitable right, to renew their Leases, not exceeding three yeers Fine as aforesaid.

Yet nevertheless some of your Petitioners came and sent up to *London*, to purchase the Reversion of their respective Farms (in pursuance of that Ordinance of Parliament, for sale of the said Bishops Lands. And after a Particular was made out for some of your Petitioners to contract upon accordingly, Your Petitioners were afterwards denied to have the priviledge to contract for the Reversion of their own Farms, held by them and their Ancestors for many hundreds of yeers, unless they would buy the whole Mannor; which your poor Petitioners (most of whose Farms were at fourty shillings per ann. and none above fifty shillings in the time of the said Bishops) being miserably impoverished by the War (which for the most part of five yeers lay heavy upon them) that they were altogether unable to purchase the Reversion of their own Farms, but by pawning their Farms to others for payment of the purchase-money. So far therefore were any of them from being able to buy the whole Mannors. Whereupon your Petitioners were forced to sit down, resting confident that the Parliament never intended (to whomsoever the Bishops Estate should be sold) that your Petitioners should be worse dealt withall then they were formerly by the Bishops themselves, by being admitted to renew their Leases as formerly; the rather, for that many of the Tenants to the said Bishop, have some of them lost their lives in the Parliaments service, leaving their wives and children behinde them in a sad condition; and others of them miserably used in prison, by the Earle of *Newcastles* Forces, till they were eaten up with Lice and Vermin, perishing in Dungeons and Prisons.

Your Petitioners therefore most humbly pray, That their sad and lamentable condition may be taken into speedy consideration, their case being different from all other Bishops Tenants in other parts of the Nation. And that your Petitioners may receive the benefit of that clause in the Ordinance, which holds forth an equitable right to your petitioners, who consist of many hundred Families, and whose Estates are bought by five or six persons, to whom some of your petitioners have offered great advantage, to confirm unto them their Estates respectively; Master *Haselrige*, one of the said Purchasers, refusing to accept of 2000. l. in ready money, for laying out 1000. l. in money and Debenters, for some part of your petitioners Estates; and so proportionably for greater sums disbursed. And others of your petitioners, whose Estates were higher Surveyed, and could not make so large an offer, have nevertheless offered unreasonable advantages to the Purchasers, that they might enjoy their respective Farms which they and their Ancestors have for so many hundred yeers enjoyed, but cannot prevaile: many of your petitioners with their wives and children, being turned out of their houses and Farms, and others of them thrown into prison, where they yet remain, and the children go a begging; the Purchaser requiring a Release from the Tenants, and a Bond never to question the Purchaser hereafter, or otherwise will not release them out of prison.

The Premises considered, Your Petitioners pray, that they may be permitted to renew their Leases for lives and yeers, as formerly they have done, paying their Rent to the present Purchasers, according to the improved value returned in the Survey: And the said Purchasers may continue their respective purchases, and your Petitioners continue Tenants unto them (your Petitioners being willing to acknowledge them for their Landlords) renewing their Leases, and doing services as formerly in the time of the Bishops, when thereunto required.

And your Petitioners shall pray, &c.



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Belongs to the
British Museum

In the Book - 15 DDh. Intitl'd an
Enquiry into the Ancient & present
State of the County Palatine of Dur
1729

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